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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 549

JOHN A. HANNAH, ET AL., APPELLANTS

vs.

MARGARET M. LARCHE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

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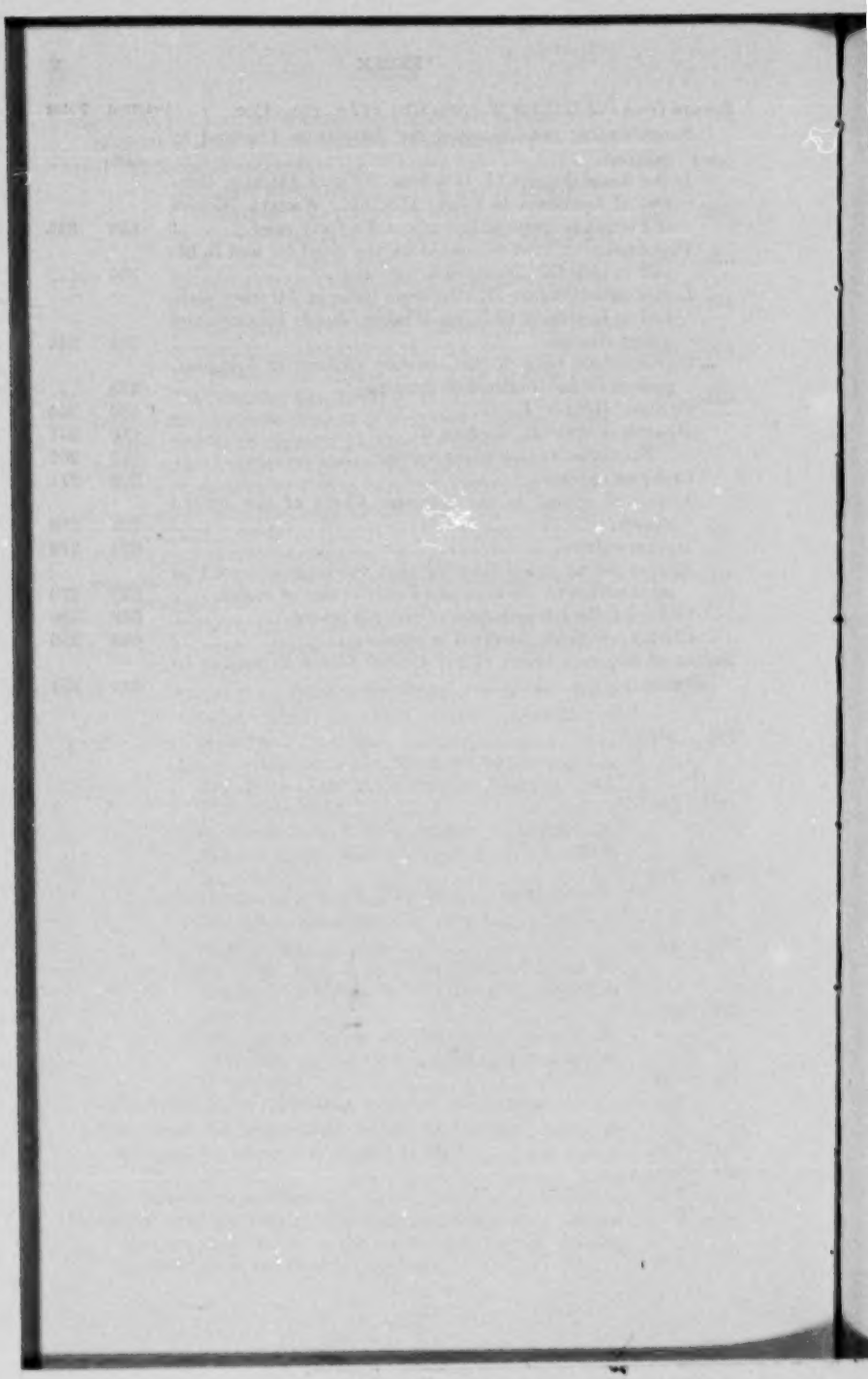

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1 In the United District Court for the Western District of Louisiana

Civil Action No. 7479

SHREVEPORT DIVISION

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSIONS OF CIVIL RIGHTS

[File endorsement omitted.]

To the HONORABLE JUDGE Ben C. Dawkins, Jr., Judge of the United States District Court in and for the Western District of Louisiana:

Complaint

Filed July 10, 1959

The complaint of:

(1) Mrs. Margaret M. Larche, a resident of the Parish of Morehouse, State of Louisiana, and the Registrar of Voters for said Parish;

(2) Mrs. Mae Lucky, a resident of the Parish of Ouachita, State of Louisiana, and the Registrar of Voters for said Parish;

(3) Curtis M. Thomas, a resident of the Parish of Washington, State of Louisiana, and the Registrar of Voters for said Parish;

(4) Mrs. W. P. Clements, a resident of the Parish of Webster, State of Louisiana, and the Registrar of Voters for said Parish;

(5) Mrs. Mary K. Bryce, a resident of the Parish of Bossier, State of Louisiana, and the Registrar of Voters for said Parish;

(6) Mrs. Lannie L. Linton, a resident of the Parish of Claiborne, State of Louisiana, and the Registrar of Voters for said Parish;

(7) Mrs. Pauline A. Culpepper, a resident of the Parish of Bienville, State of Louisiana, and the Registrar of Voters for said Parish;

(8) Sidney W. Platt, a resident of the Parish of DeSoto, State of Louisiana, and the Registrar of Voters for said Parish;

(9) Cecil E. Manning, a resident of the Parish of East Carroll, State of Louisiana, and the Registrar of Voters for said Parish;

(10) Miss Katherine Ward, a resident of the Parish of Madison, State of Louisiana, and the Registrar of Voters for said Parish;

2 (11) B. W. Berry, a resident of the Parish of Tensas, State of Louisiana, and the Registrar of Voters for said Parish;

(12) Henry Earl Palmer, a resident of the Parish of East Feliciana, State of Louisiana, and the Registrar of Voters for said Parish;

(13) Thomas W. Thompson, a resident of the Parish of West Feliciana, State of Louisiana, and the Registrar of Voters for said Parish;

(14) Mrs. Estelle Wilder, a resident of the Parish of Jackson, State of Louisiana, and the Registrar of Voters for said Parish;

(15) Joseph Walton Crawford, a resident of the Parish of Red River, State of Louisiana, and the Registrar of Voters for said Parish;

(16) Johnie L. Kelly, a resident of the Parish of Caldwell, State of Louisiana, and the Registrar of Voters for said Parish (See footnote [1]) appearing herein individually and in their respective capacities as Registrars of Voters of the State of Louisiana for their respective Parishes, hereinafter referred to as "Complainants", to-wit:

JURISDICTION

This is a suit of a Civil nature between complainants hereinabove named and the following defendants:

"John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan;

"Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas;

---

[1] U. Charles Mitchell, a resident of Caddo Parish, Louisiana, and Registrar of Voters for said Parish, was served on July 9, 1959 and joins as a complainant.

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"John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia;

"Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana;

"Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida;

"George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C.,"

all of whom are defendants herein in their individual capacities and as the duly qualified acting and sworn members of the Commission on Civil Rights created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42:1975 et seq.

3 This action arises under the Constitution of the United States of America and, more particularly, under Article I., Section 2, and Amendments IV., V., and VI., thereto as hereinafter more fully appears.

The jurisdiction of this Court is also invoked under title 28 of the United States Code, Sections 1331, 1332, 2282, 2284, this being a Civil action at law and in equity arising under the Constitution and Laws of the United States and wherein the matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars exclusive of interest and cost.

Jurisdiction is also invoked under Title 42, Section 1985, United States Code, being, an action in which citizens of the United States contend that they have, are now, and threaten to continue to be denied, equal rights under the Constitution and Laws of the United States and deprived of their Civil rights as citizens of Louisiana and the United States all by a conspiracy in violation of the Constitution and Laws of the United States.

INJUNCTIVE RELIEF

The jurisdiction of this Court is also invoked under rule 65 of the Federal rules of Civil Procedure, this being an action for injunctive relief both temporary and permanent to enjoin and restrain persons acting under color of statutes, ordinances, regulations, customs, or usages of the United States from subjecting or causing to be subjected, citizens of the United States to the deprivation of rights, privileges or immunities secured by the Constitution and Laws of the United States.

This action is further brought to obtain a declaratory judgment under the provisions of Title 28, U.S.C.A. 2201 for the

purpose of determining a question in actual controversy between the parties hereto or a justiciable controversy between the parties hereto relating to the effect of Title 42, U.S.C.A. 1975 et seq., which complainants contend is unconstitutional and void under the Constitution of the United States because it, (a) deprives complainants of the equal protection
4 of laws (Amendment XIV., Constitution); (b) denies complainants of the right to be informed of the nature and cause of accusation against them, to be confronted with witnesses against them, and to have compulsory process for obtaining witnesses in their behalf (Amendment VI., Constitution of the United States); (c) in that no person shall be compelled in any criminal case to be a witness against himself (Amendment V., Constitution); (d) because it encroaches upon the rights reserved to the State of Louisiana, (Amendment X., Constitution), and (e) that said Act is beyond the jurisdiction of Congress and is unconstitutional (Amendment IX., Constitution), and (f) that said Act is not appropriate legislation within the meaning of Section (2) of the XV. Amendment of the Constitution, and

(2) to obtain a temporary restraining order, interlocutory injunction, and a permanent injunction, restraining and prohibiting defendants, their agents, servants, employees or anyone else acting in concert with them, from enforcing, or attempting to enforce against complainants or others similarly situated any of the provisions of Public Law 85–315, 85th Congress, 71 Stat. 634, Title 42 U.S.C.A. 1975, et seq.

1

5 Between the approximate dates of June 29, 1959 and July 6th, 1959, Complainants were each served by a United States Marshal or Deputy United States Marshals with what purports to be subpoenas and restraints, and containing commandments to bring certain records and documents before the Commission on Civil Rights of the United States of America on July 13, 1959, at 9:00 o'clock a.m. in the United States District Court Room, United States Post Office Building, 424 Texas Street, Shreveport, Louisiana; that said subpoenas further commanded Complainants each to appear before said Commission at the time and place herein stated and bring with them the records named therein; all of which will more

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fully appear from the copies attached hereto and made a part hereof.

2

Complainants have not been informed as to the nature of the complaint or complaints against them and no evidence has been disclosed to your Complainants of any complaints nor have your Complainants been assured that they will be confronted with complaining witnesses.

3

Complainants specifically allege that the Commission on Civil Rights, through its duly authorized agents and representatives has repeatedly informed the Attorney General of the State of Louisiana, in his official capacity as the legal advisor of each complainant herein, by verbal and written communications, that said Commission would, under no circumstances, furnish complainants with, or permit them to examine, the written complaints required by Section 104(a)(1) of the Civil Rights Act of 1957, 42 U.S.C.A. 1975c(a)(1), upon which this investigation is alleged to be based, nor would it divulge the name or names of the accusers who attested to these secret complaints. Complainants annex hereto and make a part hereof the following copies of written communications received by the same Attorney General of Louisiana from the said agents of the Commission:

6 "1. Letter dated April 14, 1959 from Gordon M. Tiffany, Staff Director, Civil Rights Commission, addressed to Mr. W. M. Shaw, Attorney for complainant, Mrs. Lannie E. Linton; copy of which was directed to the Attorney General of Louisiana, which copy has been marked exhibit 'A' for identification.

"2. Telegram dated May 29, 1959 from Gordon M. Tiffany, Staff Director, Civil Rights Commission addressed to Hon. Jack P. F. Gremillion, Attorney General of Louisiana which copy has been marked exhibit 'B' for identification."

4

The above referred to resolution of the Commission on Civil Rights, is arbitrary, particularly but not exclusively, for the reason that the Commission has failed to divulge the name of any complainants against any actions of any Registrar and in

failure to set forth, the facts and circumstances surrounding such complaints. Said actions are not authorized by any valid or constitutional law.

5

Complainants, therefore, allege that they are citizens of the United States of America and of the State of Louisiana and that their inalienable rights as such have been and are being violated by the acts of the individuals named hereinabove in attempting to force them to testify and produce documents and records before them under the guise of legality, when, as a matter of fact, no such authority does or can exist in these individuals, separately or collectively.

6

Complainants are duly appointed and qualified Registrars of Voters in their respective parishes, State of Louisiana, in accord with the existing statutes and laws of the State of Louisiana and are now, and have at all times, complying with the statutes and laws of the State of Louisiana.

7 7

Complainants further show that the provisions of L.R.S. 18:92 and 18:94 designate records of the Registrar as public records and names the persons who may inspect and copy the same and set forth procedure, and that the defendants herein have not qualified or complied therewith.

8

The subpoenas or commandments to appear and produce records, documents, etc., above described are in direct violation of Louisiana statutes and laws, namely Revised Statutes 18:169, and Revised Statutes 18:251, in that such records, books, etc. are prohibited from being removed from the Office of the Registrar of Voters except "upon an order of a competent court" which your complainants respectfully allege is not a description of the Commission on Civil Rights as it is not a competent court under the statutes of Louisiana or of the United States of America.

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9

Your complainants further show that irreparable damage will be done to them in that Revised Statutes 18:221 sets forth the penalty provision of anyone violating the sections previously cited of the Louisiana Revised Statutes, Title 18, and making it a criminal offense to violate any provision of Title 18 and fixing the penalty at not less than $100.00 nor more than $500.00, "and imprisoned for not less than ninety days nor more than six months."

10

Complainants show that in a mimeographed document attached to the subpoenas or commandments to appear, appears "Rules of Procedure for hearings of the Commission on Civil Rights" in which appears the following:

8 "3 (i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel", the Registrars of Voters thus summoned are deprived of their constitutional right of cross-examination.

11

Complainants allege that these defendants collectively and separately are acting in an ultra vires manner in (1) attempting to force complainants to testify at such proposed hearing without first advising them of the nature of any complaint or complaints existing; (2) without allowing complainants to be confronted by complaining witness; (3) for not allowing complainants to have counsel to fully represent their interest in such hearing; (4) for not allowing cross-examination of complaining witnesses; and (5) in causing irreparable damage to your complainants and commanding each of them to voluntarily violate the statutes of the State of Louisiana and thus be subject to criminal prosecution and ultimate discharge from their respective positions as Registrars of Voters for their respective Parishes of the State of Louisiana, for the reasons hereinabove set forth.

12

That the said Act creating the Commission on Civil Rights, particularly, Section 102(h) in part provides that the Com-

mission is the sole judge of the pertinency of testimony and evidence adduced at its hearings. Such provision is invalid in that it violates constitutional rights and privileges granted under the Constitution of the United States to the said Registrars of Voters.

13

Complainants show that the Congress of the United States was without authority to delegate to the Commission authority to hold executive sessions and clothing the Commission on Civil Rights with authority to determine that evidence adduced in such sessions could or could not be released in public sessions without the consent of the said Commission. As hereinabove set forth such procedure or determinations would do violence to the constitutional right of Registrars to be confronted with witnesses against them, accompanied by facts and circumstances surrounding the complaints.

9

14

In connection with the preceding allegations, complainants either some or all of them, but all of them through their counsel, the Attorney General of Louisiana, have been advised that sworn complaints in writing have been made against all of said Registrars who are the complainants herein, and as hereinabove set forth the said Commission and its agents have refused to reveal the name of any complainant against said Registrars and have refused to reveal the nature of any complaint, all without any legal authority.

15

Complainants further show that the Commission on Civil Rights is an administrative commission and that any hearing conducted by it must be based upon specific grounds and statements of fact, as held in Jones v. S.E.C., 98 U.S. 1, 26–28, 80 L. Ed. 1015, 1026–27.

16

The proposed hearing to be held in Shreveport, Louisiana, on July 13, 1959, is not based upon any specific statement of fact revealed in any of the subpoenas served upon the Registrars and therefore, violates their constitutional rights.

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Complainants show that the proposed hearing, above referred to, is doubtless designed to foster the interest of some alleged applicant or applicants for registration under Louisiana law without affording any Registrar of Voters any opportunity of knowing the facts and circumstances surrounding the complaint; the effect of which is to supplant State law, which affords full opportunity for the protection of the rights of any applicant for registration. The case of United States v. Raines, et al., Advance Sheets of Federal Supplement, 172 F. Supp. 552, held that the Act of Congress delegating such authority to the Commission on Civil Rights was unconstitutional, and complainants show that the Acts of the Commission in connection with said hearing are without foundation in law, and that the Act is unconstitutional.

18

Complainants further show that compliance with the subpoenas, in their present forms, would make necessary the complete closing of the Registrars of Voters offices involved during the hearing and a deprivation of the rights of any eligible applicant for registration to become a registered voter of this State during the time of the closing of the Registrar offices or the removal of their records during said hearing. Neither the Congress of the United States nor the Commission on Civil Rights is authorized to bring about such a result.

19

Complainants allege that defendants, and each of them while acting in their official capacities as set out hereinabove acted in concert and engaged in a common design, have in the past conspired and are now conspiring with each other, to deny complainants their rights and privileges as citizens of the State of Louisiana and of the United States; that the defendants and each of them while acting in concert and engaged in a common design with each other, have in the past conspired, are now conspiring and threaten to continue to conspire together with each other to deny and deprive complainants of their right to be

confronted by their accusers, to know the nature and character of the charges made against them and official complaints lodged with the Civil Rights Commission, to force them to violate the laws of the State of Louisiana and their oath of office as officials of the State of Louisiana, to deprive them of their constitutional prerogative of immunity from testifying
11 against themselves, all in violation of Article I., Section 2, and Amendments I., IV., V., and XVII. of the United States Constitution and 42 U.S.C. 1985.

20

Complainants are now and threaten to continue to be greatly harmed, damaged, and injured by the wrongful, knowing and purposeful acts of the defendants and each of them, and they have no plain, adequate or efficient remedy at law to redress the wrongful, knowing, and purposeful acts of defendants other than this action for injunctive relief, that any other remedy to which they could be remitted would be attended by such uncertainties and delays as to amount to a substantial denial of relief, would involve a multiplicity of suits and would cause complainants irreparable harm and injury and occasion them undue hardship, vexation and delay, and that injunctive relief is necessary in the premises, that such relief is even necessary, prior to a hearing because of the present and continuing irreparable injuries being suffered by your complainants, and that your complainants will suffer irreparable damage during the pendency of this action unless a temporary restraining order is granted, without notice and before hearing, enjoining and restraining defendants, their agents, servants, employees and attorneys from enforcing or attempting to enforce the said provisions of Public Law 85-315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq., as concerns complainants herein and others similarly situated.

Wherefore, Complainants pray:

(1) That a temporary restraining order and judgment issue herein immediately and without notice in accordance with law upon defendants enjoining and restraining defendants from:

(a) requiring any testimony from or the production of any records by complainants herein at the hearing scheduled
12 July 13, 1959, at Shreveport, Louisiana, or any subsequent hearing which may be called or scheduled by de-

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fendants herein until such time as defendants have furnished or caused to be furnished to complainants copies of the charges and/or sworn complaints, together with the names and addresses of the person or persons making the charges or filing the sworn complaints upon which charges and/or sworn complaints the scheduled hearing is alleged to be based and until such time as complainants have had reasonable time to examine, study and investigate the furnished information above described and requested and until such further time as Louisiana law permits your complainants to produce and transport voting registration records to places other than the official domicile and office of registrar of voters, and

(b) from conducting any hearing pursuant to the rules and regulations adopted by defendants, a copy of which rules and regulations is attached to and made a part of this complaint, as well as conducting any hearing pursuant to the resolution adopted by defendants of date March 14, 1959, a copy of which resolution is attached to and made a part of this complaint.

(c) conspiring together with themselves or with any other person or persons to deny complainants their rights and privileges as citizens of the State of Louisiana and of the United States or to deny to complainants their right to be confronted by their accusers, to know the nature and character of the charges made against them, or to deprive them of counsel, or to force them to violate the laws of the State of Louisiana and their oath of office as officials of the State of Louisiana,
13 or to deprive complainants of their constitutional prerogative of immunity from testifying against themselves, all in violation of Article I., Section 2, and Amendments I., IV., V., VI., and XVII. of the United States Constitution and 42 U.S.C. 1985.

(2) That a three judge Court be convened pursuant to the provisions of Title 28 of the United States Code, Sections 2282 and 2284.

(3) That this Court declare and adjudge, by declaratory judgment, that Public Law 85–315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq., is unconstitutional, void, and ineffective in its entirety and without force of law, and that complainants are not required to comply with or be subjected to the terms and provisions thereof.

(4) That the defendants, and all of them, their agents, servants, employees and attorneys, be restrained and enjoined

by order of this Court, temporarily during the pendency of this action, and permanently after the final hearing from attempting to enforce the provisions of the aforesaid Act, namely, 71 Stat. 634, 42 U.S.C. 1975 et seq. against complainants or others similarly situated.

(5) That meanwhile, and until the hearing and determination of the application for a preliminary injunction as aforesaid, by a temporary restraining order, as provided in Section 2284 (3) of Title 28 of the United States Code, to prevent immediate, great and irreparable injury, loss or damage to complainants herein which will result as aforesaid, before notice can be served and a hearing had upon the application for a preliminary injunction, the said defendants, their agents, servants, employees and attorneys be restrained and enjoined from enforcing, attempting to enforce or from proceeding under the provisions of the said Public Law 85-315, 85th Congress, 71 Stat. 634, 42 U.S.C. 1975 et seq. as concerns complainants herein and others similarly situated.

14

(6) That this cause be advanced on the docket of this Honorable Court and set for a speedy hearing according to law, and upon such preliminary hearing that a temporary injunction issue enjoining and restraining defendants, their agents, servants, employees, successors in office and those acting in concert with them from the several acts and under the same terms and conditions as prayed for in paragraph 1 of this prayer.

(7) That upon final hearing of this cause upon its merits this Honorable Court enter a permanent injunction that will enjoin and restrain the aforesaid defendants, their agents, servants, employees, successors in office and all persons acting in concert with them forever from the several acts and under the same terms and conditions as prayed for in paragraphs 1 and 2 of this prayer.

(8) That this Honorable Court allow complainants to recover costs incurred herein and grant any other orders or relief which may appear fitting, proper or just in the premises whether the same is based upon the preliminary hearing prayed for or the trial of the case on its merits.

By attorneys:

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
2201 State Capitol, Baton Rouge, Louisiana.

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15 George M. Ponder,
GEORGE M. PONDER,
First Assistant Attorney General,
State of Louisiana, 2201 State Capitol,
Baton Rouge, Louisiana.

Of counsel:
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New Orleans, Louisiana.
JOHN E. JACKSON, Jr.,
New Supreme Court Building,
New Orleans, Louisiana.
WILLIAM P. SCHULER,
New Supreme Court Building,
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Beck Building,
Shreveport, Louisiana.
FRANK J. LOONEY, Sr.,
Shreveport, Louisiana.
LOUIS H. PADGETT,
Bossier City, Louisiana.
ALBIN P. LASSITER,
Courthouse, Monroe, Louisiana.
FRED JACKSON,
Homer, Louisiana.
WILLIAM SHAW,
Homer, Louisiana,
Attorney for Mrs. L. L. Linton.

16 THOMPSON L. CLARKE,
St. Joseph, Louisiana.
CAMERON C. MINARD,
Columbia, Louisiana.
LESTER HUGHES,
Natchitoches, Louisiana.
RICHARD H. KILBOURNE,
Clinton, Louisiana.
FRANCE WATTS,
Franklinton, Louisiana.
J. REUEL BOONE,
Many, Louisiana.

17 *Exhibit "A" to Complaint*

APRIL 14, 1959.

DEAR MR. SHAW: The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

Having considered the same, the request was denied by the following statement adopted by the Commission:

"The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

GORDON M. TIFFANY,
Staff Director,
For the Commission on Civil Rights.

MR. W. M. SHAW,
Meadors, Shaw & Meadors,
South Main Street, Homer, Louisiana.

A true copy of original received by me.

W. M. SHAW,
Meadors, Shaw & Meadors,
South Main St., Homer, La.

18 *Exhibit "B" to Complaint*

P WXM059 LONG GOVT DL PD—TX WASHINGTON DC 29 259 PME—

THE HON JACK P. F. GREMILLION, ATTY GENERAL OF LOUISIANA—DEPT OF JUSTICE BATON ROUGE LA—MAY 29 PM 236

ACKNOWLEDGING YOUR LETTER OF MAY 28, YOU COMMENT THAT CERTAIN QUESTIONS IN THE INTERROGATORY ARE OBJECTIONAL BECAUSE IMMATEIAL AND IRRELEVANT, THAT OTHERS ARE CONTRARY IN LAW. AS COUNSEL TO THE REGIS-

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TRARS AND FOR THE PURPOSE OF THIS INTERROGATORY SUCH OBJECTIONS MAY BE NOTED BY YOU IN THE REPLY. QESTIONS OF MATERIALITY, RELEVANCY AND OTHER OBJECTIONS WILL BE CONSIDERED ALONG WITH THE COMPLETED ANSWERS BY THE COMMISSION IN DETERMINING THE NECESSITY OF A HEARING. THE INTERROGATORIES COVER SPECIFIC ALLEGATIONS OF THE COMPLAINTS RECEIVED BY THIS COMMISSION. SUCH ADDITIONAL QUESTIONS AS APPEAR IN THESE INQUIRIES ARE SUBMITTED BY THE STAFF OF THE COMMISSION AS RELEVANT TO OUR STATUTORY DUTIES.

AT NO TIME HAS THE COMMISSION AGREED TO FURNISH THE SPECIFIC COMPLAINTS OR INFORMATION WHICH DIRECTLY OR INDIRECTLY WOULD DISCLOSE THE IDENTIFY OF COMPLAINANTS. IN THIS REGARD WE CALL YOUR ATTENTION TO THE ACTION OF THE COMMISSION AS NOTED IN MY LETTER OF APRIL 14TH, ADDRESSED TO ATTORNEY WILLIAM SHAW, A COURTESY COPY OF WHICH WAS ADDRESSED TO YOU.

WE APPRECIATE YOUR CONTINUED COOPERATION AND WE TRUST THAT THE COMPLETED INTERRORGATORIES WILL BE RECEIVED IN THIS OFFICE BY JUNE 55. SINCERELY—

GORDON M TIFFANY STAFF DIRECTOR

A true copy of original telegram received by undersigned July 10, 1959.

JACK P. F. GREMILLION,
Attorney General of Louisiana.

19 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA,
Parish of Morehouse:

Before me, the undersigned authority in and for the Parish of Morehouse, State of Louisiana, personally came and appeared Margaret M. Larche, a resident of said State and Parish

and Registrar of Voters in and for the Parish of Morehouse, State of Louisiana, who, upon being duly sworn, declared:

That she is one of the complainants named in the above and foregoing complaint; that she has read the same, and that all the allegations contained therein are true and correct.

Margaret M. Larche.
MARGARET M. LARCHE.

Sworn to and subscribed before me, on this the 9th day of July, 1959.

[SEAL] WOODROW WILSON,
Notary Public.

Clerk's note

Similar jurats executed by Mrs. Mae Lucky, Mrs. Mary K. Bryce, Sidney W. Platt, B. W. Berry, Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, Thomas W. Thompson, Henry Earl Palmer, Mrs. Pauline A. Culpepper, Mrs. Winnie B. Clement, Mrs. Lannie L. Linton, Cecil Manning, Miss Katherine S. Ward, Curtis M. Thomas, and U. Charles Mitchell appearing on pages 20 through 28 inclusive are omitted in printing.

29 *In United States District Court for the Western District of Louisiana*

Subpoena for Mrs. Margaret M. Larche

UNITED STATES OF AMERICA

COMMISSION ON CIVIL RIGHTS

To Mrs. Margaret M. Larche, Registrar of Morehouse Parish. At Bastrop, Louisiana.

Greetings:

Pursuant to lawful authority (P.L. 85–315), YOU ARE HEREBY COMMANDED to be and appear before the Commission on Civil Rights of the United States of America, or a duly appointed Subcommittee thereof, on July 13, 1959 at 9:00 o'clock, a.m., at their Commission Hearing Room, at U.S. District Court Room, U.S. Post Office Bldg., 424 Texas Street, Shreveport, Louisiana, then and there to testify what

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you may know relative to subject matters of inquiry committed by law to the consideration of said Commission, and not to depart without leave of said Commission.

You are hereby commanded to bring with you and produce before said Commission, or a duly authorized Subcommittee thereof, the following:

1) All records contained in Master Record File & Closed and Disqualified File, from Jan. 1, 1957 to July 1, 1959, as required to be kept under LSA–R.S. 18:235, including but not limited to forms of application for Registrars completed by all applicants, under LSA–R.S. 18:235, and all records required to be kept under LSA–R.S. 18:91.

2) All applications and disposition of such applications for copying, photographing or photostating records from Jan. 1, 1957 to July 1, 1959, under LSA–R.S. 18:92.

3) All notifications of citations to erase and answering affidavits of challenged voters & supporting witnesses, from Jan. 1, 1957 to July 1, 1959, under LSA–R.S. 18:133.

4) All rules and regulations issued by the State Board of Registration from Jan. 1, 1953 to July 1, 1959, under LSA–R.S. 18:191.

5) All letters, notices, memoranda or opinions, concerning administration of the registration laws, received from the Joint Legislative Committee (Concurrent Res. 27 (1954) and 9 (1956)), or its personnel, or the Attorney General of Louisiana, from Jan. 1, 1954 to July 1, 1959.

[Title and Sections refer to Louisiana Revised Statutes of 1950.]

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided in Sections 105(f) and 105(g) of the Civil Rights Act of 1957, reproduced herein.

To United States Marshal to serve along with the attached copy of the Rules of Procedure approved by the Commission on Civil Rights, and a copy of the Civil Rights Act of 1957.

Given under my hand this 29th day of June in the year of our Lord, 1959.

J. A. Hannah,
J. A. HANNAH,
Chairman—Chairman of Subcommittee.

29a UNITED STATES OF AMERICA

COMMISSION ON CIVIL RIGHTS

RETURN ON SERVICE

Subpena for .....
before the Commission on the .....
at.....

Received this subpena at .....
on ..... and on .....
..... at .....
I served it on the within named .....
by delivering a copy to h—— along with an attached copy of the Civil Rights Act of 1957 and Rules of Procedure approved by the Commission on Civil Rights, and tendering to h—— the fee for mileage allowed by law.

.....

Service Fees
Travel (at 8¢ per mile) $ .....

Subscribed and sworn to before me, a .....
..... this .....day
of ....., 19—

.....

(Note: Affidavit required only if service is made by a person other than a U.S. Marshal or his deputy.)

CIVIL RIGHTS ACT OF 1957

SEC. 105

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States

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court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

29b *Clerk's note*

Similar subpoenas on Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Wells Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry E. Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell appearing on pages 30 through 45 inclusive are omitted in printing.

46 In United States District Court, Western District of Louisiana

Marshal's receipt

UNITED STATES DISTRICT COURT,
OFFICE OF THE CLERK,
WESTERN DISTRICT OF LOUISIANA,
Shreveport 81, La.

Civ. No. 7479 & Civ. No. 7480

RECEIVED OF ALTON L. CURTIS, Clerk, USDC, WD OF LA. SIX ORIGINAL SUMMONSES & SIX COPIES FOR SERVICE, WITH ATTACHED CERTIFIED COPIES OF PLAINTIFF'S COMPLAINT, ETC. IN EACH CASE.

U.S. MARSHAL,
S'port, La.
By J. W. CANE.

JULY 10, 1959

65 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS.

Civil Action No. 7480

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

Transcript of proceedings

July 10, 1959 and filed July 30, 1959

Proceedings had in the above entitled actions, before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Shreveport, Louisiana, on July 10, 1959, at two o'clock
66 P.M. Appearances; Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana. Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana. Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, Louisiana.

Plaintiffs in Civil Action No. 7479. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana.

Plaintiffs in Civil Action No. 7840. Robert G. Storey, vice-Chairman, Commission on Civil Rights, Washington, D.C. Gordon M. Tiffany, Director, Commission on Civil Rights. Berl I. Bernhard, Attorney for Commission on Civil Rights. A. William Mottolese, Attorney for Commission on Civil Rights. C. E. Clark, Legal Assistant to Robert G. Storey.
67 Defendants: Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

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Colloquy

The COURT. Gentlemen, the Clerk just handed me, about twenty minutes ago, two rather lengthy complaints, the first being entitled "Mrs. Margaret M. Larche, et als., against John A. Hannah, et als.", No. 7479; the second being "J. A. H. Slawson, et als. vs. John A. Hannah, et als.", No. 7480.

The Court was advised in advance that these complaints would be filed, and out of a sense of fairness, we invited the attorneys and representatives of the Civil Rights Commission to be present because we understood that applications would be made for Temporary Restraining Orders as against the scheduled Hearing on Monday, July 13, 1959, to be conducted by the Commission.

I am sure the members of the Commission and their attorneys have not had time to read these Complaints, and neither has the Court, with any degree of understanding. For that reason, I think it would be proper that we adjourn this Hearing from now until 3:30 P.M. That will give an hour and a half. Will that be adequate time for you gentle-
68 men to orally answer the points that will be made? We will hear oral arguments from both sides upon reconvening, and it would be my purpose to have a brief filed by the Commission in opposition to the briefs which have been handed to me by the attorneys for the complainants. That brief will be filed, if possible, by noon tomorrow. I will defer ruling on the Application for the Temporary Restraining Order until I have had a chance to study the briefs and authorities that will be submitted in opposition to the Application.

Will an hour and a half be sufficient time for you to make, at least, an oral argument?

Mr. LASSITER. May it please the Court, as far as the Complainants are concerned, we have no desire to orally argue this thing.

I believe, and, of course, I am not speaking for the Commission, but suggesting, they could probably use the time better in answering our briefs, copies of which have been served.

If they want, we will waive the oral argument.

Mr. STOREY. I haven't seen any briefs.

Mr. LASSITER. They were just handed to you.

Mr. STOREY. I haven't seen any briefs.

think an hour and a half to confer would be agreeable with us, if it is agreeable with Your Honor.

69 The COURT. Frankly, I am not going to decide this upon the oral arguments, Colonel Storey. It may be you might use the time to greater advantage by working on the brief in reply than you might by coming back here for oral arguments.

Mr. STOREY. Do I understand the suggestion that Your Honor is making, that we adjourn until 3:30, to allow us to become familiar with this?

Of course, I say to Your Honor I understood the Petition would be presented, and find myself as a Defendant at this moment.

May we defer until 3:30 to decide whether or not we want to make a verbal statement? We will be back at 3:30, because there are voluminous papers, and I didn't know there was a brief, but we will certainly go into it as rapidly as possible.

Mr. SHAW. May it please the Court, I understand that Mr. Tiffany and the other attorney are appearing as representatives of the Civil Rights Commission and the named Defendants; is that correct?

Mr. STOREY. I cannot reply until I have had a chance to read these.

I understood I was to come here in an informal way, as suggested by Your Honor, and I find myself sued in two lawsuits.

70 I will let you know at 3:30.

Until I read this Petition, as well as your allegations, I cannot make any statement, and I don't think Your Honor should call upon me to make such a statement.

Mr. SHAW. He is either here, present, as a representative of the Civil Rights Commission, or not.

Mr. STOREY. If Your Honor please, I will answer that at 3:30.

Mr. SHAW. I would like to ask that the record show whether he is appearing as a representative of the Commission, or not?

The COURT. He is certainly here in proper person. There is no doubt about that.

Mr. SHAW. Is Mr. Tiffany here as a Defendant?

The COURT. Mr. Tiffany is Director of the Civil Rights Commission, and is not here as an attorney. Mr. Bernhard, Mr. Clark and Mr. Mottolese are here as attorneys. Is that correct, Mr. Tiffany?

Mr. TIFFANY. That is correct.

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Mr. SHAW. As attorneys for whom?

Mr. STOREY. May we answer that at 3:30? In the name of common decency and common justice, we should have at least until 3:30 and then I will answer your question.

71 The COURT. Court will recess until 3:30.

(Whereupon, at this point, there was a recess until 3:30 P.M.)

The COURT. The Court has been advised by the Crier that a photographer asked permission to make pictures in this Courtroom. That is strictly against the law and against the rules of this Court. It will not be permitted.

Have you decided whether you would like to be heard?

Statement of Mr. Storey in his behalf

Mr. STOREY. Yes, sir. First, I would like to read a statement in my behalf, if I may, for the record.

My appearance is pursuant to this Court's kind invitation to be present at a Hearing based upon a presumed ex parte Motion by the Attorney General of Louisiana. This Motion was understood to be for Temporary Restraining Order, seeking to postpone the Hearing set by the Commission for Monday, July 13, 1959, and upon the express understanding that the Hearing upon such Motion would be informal and in Chambers.

I am here for the limited purpose of responding to this Motion, and for no other purpose. My appearance is not to be taken as a submission to the jurisdiction of this Court to be sued individually, or in a representative capacity as a

72 member of the Commission of Civil Rights.

Shortly after the recess by the Court, at 2:33 P.M., this day, I was served with Citation and copy of Plaintiffs' Brief in Civil Action Nos. 7479 and 7480 in this Court.

I am ready at this time to make my statement and oral argument in Answer to the Application for a Temporary Restraining Order to prevent the conduct of the Commission Hearing, that is, to prevent the Hearing scheduled for Monday, July 13, 1959.

I ask leave of the Court to proceed now to make statement and oral arguments and reply to that part of the Application

and Brief filed, as pertaining to the Application for the Temporary Restraining Order, and for no other purpose.

May I supplement that to submit the matter on brief. Anticipating some of the issues that might arise, we have caused to be prepared a very informal memorandum brief, which so-called memorandum brief, the original of which I will hand the Court, and a copy to counsel on the other side.

Might I add, we believe after the brief conference and with the Brief they have submitted, the authorities and Petition, and the authorities we have in reply, that we might pro-
73 ceed to this Hearing under the limited expression indicated.

I would, therefore, suggest, if Your Honor is ready, we hear from the proponents and then we will reply, and go ahead with the briefs we have, especially, Your Honor, in view of the time, and I think Your Honor will take judicial notice this matter has been set, and according to their allegations, various witnesses have been subpoenaed and we think time if of the essence, and, therefore, we are ready to proceed.

Statement by the Court

The COURT. I might give you some tentative observations before you present your oral arguments, which I would like to have you cover in your arguments and, perhaps, be the subject of additional authorities, or briefs.

Aside from the question of constitutionality of the Statute itself, under which the Commission was constituted to operate, which is not before the Court, directly at this time, but would be the subject of action by a three-judge Court at some later time, these questions occur tentatively to the Court as being of much importance with respect to the application for a preliminary restraining order.

First, as to the question of the allegedly unlawful requirement for the production of the registrars' records, the Court has read the State Statute applicable to that subject
74 matter, and we also have noted the act creating the Civil Right's Commission.

Under the Federal Statute, failure to produce those records at the Hearing, does not, in and of itself, invoke a penalty. It simply requires that the Attorney General thereafter, if the Commission insists upon such records being produced, apply to

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the District Court of the Jurisdiction where the hearing is being conducted and ask the Court for an Order requiring production of such records.

Then, we believe, tentatively, of course, that any such order issued by this Court would remove the registrars from the penalties of the State law which prohibits such registrar from producing such records anywhere away from his office, except upon the order of a competent court. We believe this Court would be a competent court under such circumstances.

Second, as to the objection that the Commission's subpoena would require the complainants in this action to appear before the Commission, either in open session or in executive session, and give testimony which either would be, or might tend to be, incriminating, there is always available, of course, in such instances the refusal to testify under the Fifth Amendment.

The thing that strikes the Court as being most serious
75 in this Application for a Restraining Order, is the charge made in both of the complaints that the complainants by these very proceedings would be held up to public approbrium in this manner: that they have not been advised in advance of the charges that have been made against them, nor of the names of the persons whom accused them, and they, accordingly, do not know what the charges are and who is accusing them, and it is their constitutional rights to be so advised.

Third, if they do discover, at the public hearing, the names and the nature of the charges brought by their accusers, by the Commission's rules, which are claimed to be ultra vires by the Statute under which the Commission is created, prohibits either the complainants or their counsel to cross-examine such witnesses against them.

There is another question, and that is at to whether this Commission is subject to the terms and provisions of the Administrative Procedure Act adopted by Congress some years past. If it is, then clearly the complainants here would be entitled to know the nature of the charges, the names of their accusers, and to cross-examine.

Those are the points which seem to strike the Court as being the most serious ones, aside from the constitutional ques-
tion which is not before us directly, but is before us
76 incidentally in the consideration of the balancing of equity whether or not this restraining order should be issued.

With those observations which, we repeat, are all tentative and our mind is completely open and is subject to change after reading the authorities and hearing the oral arguments of able counsel on both sides, to which this Court will give the greatest consideration.

I should mention one more point, and it is this: if the hearing proceeds as scheduled, and if it results at the hearing that these complainants, are, in their judgment, slandered and held up to public approbrium by accusations which they consider to be false, and which they can demonstrate to be false by cross examination, and then the matter would proceed to a three-judge court, would or would not that question be moot when reached by the three-judge court? I think that is something we all have to consider.

Go ahead, Mr. Gremillion.

Colloquy

Mr. GREMILLION. If the Court please, to save time and not to burden the Court unnecessarily, we cannot say here more than we have already given the Court in our brief—in our memorandum on the discretion of this Court to issue the temporary restraining order, which we think is very thorough.

77 I forget the name of the case, but it is on page 3 of our memorandum and, of course, the additional brief we filed on the constitutionality question.

We cannot say any more than is in those particular briefs, and if the Court wants me to proceed to repeat what is in those briefs, I will be very glad to do it.

So far as we are concerned, in order to save time, and save your week-end as much as possible, we will submit the matter on the memorandums we have presented to the Court.

The COURT. Are you gentlemen sufficiently acquainted with the briefs which were filed by the proponents to reply to them?

Mr. STOREY. Your Honor, we would like to reply orally, not only in the nature of statements in reply to their complaints, but comment on some provisions of the Act, and then submit some authorities, being as fair as we can to the Court and opposing counsel, so you might understand our position.

We don't want to go over the week-end, if we can avoid it, and since time is of the essence, I think it might be helpful if

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we stated what our position is and point out some of the points, if that is agreeable with Your Honor.

78 Does Your Honor have a copy of this Act in pamphlet form?

The COURT. I believe there is a copy attached to one of the complaints.

Mr. GRENDLEAU. May I state, Your Honor, that a copy of the Act is attached to our brief on constitutionality.

Mr. SHAW. May it please the Court, I would like to say although the suit which I filed is a different suit, the brief filed on behalf of the plaintiffs in Civil Action No. 7479 covers all the points I would cover on behalf of my clients.

The COURT. Except the principle difference in your case is, that you do not attack the constitutionality of the Statute and you do not ask for a three-judge court.

Mr. SHAW. That is correct. They cover everything I cover, and some additional points, and I would be willing to submit it on their brief.

Mr. STOREY. If Your Honor please, I should like to point out a few points as provided in the Act, and I think they bear on some of the issues Your Honor pointed out, and may I say we appreciate Your Honor indicating some of the points about which he would like to hear.

Before I do that, however, may I say this, sir: I think it is fundamental in an equitable proceeding to examine the petition on the face and see whether or not it states a cause of action.

79 We do not think that either petition states a cause of action for injunctive relief, or for that matter, as a matter of law, principally for these reasons: first, as to the injunctive relief, and that is the principal thing they are after, is to postpone or prevent this particular hearing. They do not show any damages, or shall I say, any existing or past acts of irreparable injury, but they are all alleged to be in the future and are speculative, to say the least, and anticipatory, and are not real.

I think a fair reading of the petition in both cases, so far as injunctive relief is concerned, and you and I realize that is ancillary to the cause of action that must be stated—all in the future, or anticipatory, or speculative and in the future.

In the next place, looking at the petition as a whole and hurriedly examining it as his justification for the registrars'

suit that the Attorney General filed, he alleges the amount in controversy exceeds $10,000 by virtue of a certain Louisiana Statute. As we have hurriedly examined that Statute, the maximum penalty—may I say, both of these suits are civil suits and the Statute to which they refer, as we understand, provide a maximum penalty of $500 each. I believe there are sixteen complainants, and according to our arithmetic, I believe, that would be five times 16, which is 80, or $8,000. It shows
80 on its face that a cause of action is not stated as to the original, or main, cause of action to which the injunction is ancillary, and then on the ancillary part, we get into the speculative, or anticipatory.

That is our first point, looking at the petition on its face.

The COURT. Excuse me. I want to make a notation as I go along.

Mr. STOREY. As we have examined the petition in a very hurried manner, there are conclusions that the amount exceeds $10,000 in controversy in both cases, which they attempt to justify by virtue of penalties under a certain Louisiana Statute which the maximum, as I understand it, is $500 apiece.

Now, to the questions Your Honor raises, and I realize what they are—this question of incrimination, as Your Honor concludes, that might be handled by refusal to testify, according to the judicial records in Alabama. I think the case is reported that they did take advantage of the refusal to testify, and then in another instance refused to produce records, and later the Attorney General filed a civil suit, which, I understand, is still on its way upstairs.

As I understand, in the next place Your Honor said the
81 most serious, and I can appreciate what Your Honor says—that they are not advised of the charges and those accusing them.

In the first place, Your Honor, again going to the sufficiency of the petition, this is not an adversary proceeding. Of course, they have alleged that they are suing us for these things, but, in effect, what we are trying to do with reference to the hearing is not an adversary proceeding. The law doesn't so provide, and nobody is accused.

In other words, according to the records, they allege that the registrars for whom the first suit is brought have been subpoenaed to bring with them certain records of their office, which we allege are public records. We are not accusing any-

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body, and there has been no accusations. That is purely conjectural on their part in such allegations.

In the next place, in a hurried reading, they indicate if they came, they would have to close their office.

In our hurried examination of the Louisiana law, as I recall, each one of the Registrars can appoint a deputy while they are away, and you have the Police Jury for the purpose of appointing substitutes.

The COURT. They would probably answer to that by saying since you are calling on them to produce their records,
82 without the records the office couldn't operate.

Mr. STOREY. May I say, at least, it would be very temporary.

In order to try to make my point, Your Honor, the proposed hearing is not an adversary proceeding and we are not accusing anybody, and this issue of preventing their having the opportunity for cross-examination, etc., let me call three or four paragraphs of the Act to the attention of the Court.

The COURT. I think, probably, what they are afraid of and what their main complaint is about, Dean Storey, is that not the Commission itself, but the witnesses whom the Commission will call will accuse and will be subject to no further cross-examination in the search for a complete answer.

Mr. STOREY. I will get to that next. That is in there, I realize, but I hope to point out some provisions in the Act, so far as that is concerned.

We are not responsible for what Congress passed. We take the Act as it is.

May I call attention to the first part, which says:

"There is created in the Executive Branch of the Government a Commission on Civil Rights (hereinafter called 'The Commission')."

83 Then, it provides for the appointment of six members by the President, and that not more than three of the members shall at any one time be of the same political party.

The COURT. I might save you a little time. I am thoroughly familiar with the Act. I have read it from cover to cover, and back again.

Mr. STOREY. I am glad you have, sir, and probably my argument is superfluous.

I think it is only fair that with reference to the hearing, may we emphasize our points for the benefit of opposing counsel.

With reference to the hearings, under sub-paragraph F on page 3:

"The Commission, or on the authorization of the Commission, any sub-committee of two or more members, at least one of whom shall be of each major political party, may for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as The Commission or such authorized sub-committee deem advisable. Subpoenas for the attendance and testimony of all witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in Section 102 (j)(k) of this Act."

Then, it provides in the case of refusal to obey the subponea, etc.

Now, as to the question of failure to disclose the names of the witnesses, or the witnesses who might appear and
84 testify in advance, or if one is deprived or alleges he is deprived of his right to register, or vote, because of race or color, in my opinion, that complaint, which is required to be filed in writing and under oath before the Commission, and we, as the Act provides, as you will recall, the first and only mandatory provision of the Act, is that we shall investigate any complaint in writing under oath filed by a citizen of the United States alleging he has been denied the right to vote, or to have the vote counted by virtue of race, color, creed or national origin.

I think a fair construction of that is that certainly that is confidential matter.

Are we, as a Commission, required to divulge and to make known these complaints? They say we shall investigate them.

In the second place, I want to call attention of counsel, and Your Honor knows it: this Commission goes out of business on September 9, 1959. That is not long off.

The COURT. Unless it is reinstated.

Mr. STOREY. That is a question I don't think we can take into consideration in this hearing, or in the legal issue involved.

I am talking about what it is now, and what we are
85 facing, and the reports we are trying to deal with

In an ordinary civil proceeding, and this is a civil suit—in an ordinary civil proceeding, are there any rules, Federal or otherwise, that require the disclosure of the names of the witnesses and the information that is in any complaints that might be filed?

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Under the regular Federal procedure of discovery, and all of those remedies it is provided, but Congress did not see fit to provide it under this Act.

The COURT. Our Court rules provide for that, sir.

Mr. STOREY. Your Honor can inject them, if that is what Your Honor wants, if your Court rules so provide if it reaches Your Honor.

May I say, with reference to your other point, about if the damage is done, and they are alleging they are brought here and they are accused of these things, and again, that is anticipatory, but Your Honor observed what happened if the harm is done and later if they might prevail, or they might have proper recourse.

I just wonder if there is anything under the Act, or anything under the law, or anything under the decisions that require us to go that far.

Now, I think, and Mr. Bernhard a little later will be
86 glad to discuss some of the particular decisions as to whether or not the fact that because of this Act and because of the administrative procedure rules, etc., they do not have the right of cross-examination, and all of that.

Again, I think for the purpose of this hearing, or whether or not a preliminary or temporary restraining order is issued, that again, there is nothing in the law that justifies the granting of a temporary restraining order based upon that anticipation, because I think it is rather certain they will use lawyers, and it provides for the right of counsel to accompany these very people. The Attorney General files this suit in behalf of the registrars who are named, and he certainly represents them, and he has that right to represent them in the hearing before us, and if we get out of line and if he feels the procedure is improper, as laid down by the law and the authorities here, he can stop those things, or take whatever legal action he anticipates should be done at that time.

If Your Honor please, at this time that is about all I have to say, but in order to get our position before Your Honor, and before counsel on the other side present their argument, Mr. Tiffany, who is the Staff Director and former Attorney General of the State of New Hampshire, would like to make a statement, and then followed by that, Mr. Bernhard
87 will discuss some of the particular cases that are involved, if that is agreeable with Your Honor.

The COURT. All right:

Statement by Mr. Tiffany

Mr. TIFFANY. May it please the Court, I appear neither as a party, nor in the strict sense as counsel in the proceedings underway at the present time.

As Dean Storey said, I am Staff Director, and my name has been mentioned in the petition. I happen to be an attorney, and I would appreciate the opportunity to comment to the purpose—the limited purpose—of the request for a restraining order.

I think, possibly, I may be of some help in explaining some detail the character of the Commission, as it may be of concern to the Court in the proceedings.

When I say that, I don't appear as counsel, and the others don't appear as counsel. There is no provision, as the Court well knows from the study of the Act, that we should have counsel, or not have counsel in the Commission on Civil Rights. There is no comment that we have authority to sue or be sued. The only mention is in connection with the section which Your Honor cited a short time ago, that upon petition by the Attorney General to a Court of proper jurisdiction—the Commission itself has no contempt power of its own. It
88 can only proceed through the office of the Attorney General.

My limited appearance is solely as Staff Director for the purposes of the restraining order. Under the language of the Act, this Commission is set up to determine facts and not to resolve disputes, particularly, with respect to complaints which may tend to show that the right to vote is being denied because of race, creed, color or religion.

In a way, this Commission is doing no more than a Committee of the Congress itself, that is, as far as the fact finding procedure is concerned in making recommendations if it has any.

It issues no orders other than if the Court would consider subpoena an order. As I said earlier, the Commission has no contempt power which can enforce the order. It cannot remove any registrar. It cannot invoke penalties. It is not a part of the Justice Department, as I am sure Your Honor appreciates. It is set up under the same Act, yes, but separate and distinct from the Justice Department and is not to be confused with the Justice Department.

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We accuse nobody, in the criminal sense of the term, whatever. It is a question of what are the facts, and these we need to determine with all accuracy and objectivity in
89 the best manner possible. It is an entirely independent agency, therefore, in that regard. It cannot tell a single registrar to put a single voter's name on the voting list. It does not have any authority to remove anybody from his office, as in some of the cases which later may be cited to Your Honor.

In short, there appears to be in the express language of our section of this Statute, "no action within our power which could lead to irreparable injury", as we understand it, necessary to invoke consideration of this Court.

There is an obligation on the Commission to determine facts, fairly and impartial. In this particular instance, registrars and other State officers have denied that persons in the State of Louisiana are being denied the right to vote because of their color.

Under the circumstances, Your Honor, we submit that the only fair thing this Commission could do is hold a hearing and let the complaining witness take the stand, under oath, and tell his story, and this affords the registrar to do the same under the rules of this Commission, and those rules of proceedure specifically set forth by the Congress in the Act adequately provide safeguards which do protect the personal rights of those who appear before this Commission.

90 The hearing is not undertaken lightly, Your Honor. The Commission has this authority, and invokes it only as it is necessary: to be sure that it has the entire set of facts that it needs for its purposes.

Hearings take time and take expense, as Your Honor well knows. The actual hearing itself may begin and end in a short space of time, but it is the result of considerable work on the part of many people.

In this particular instance, our Commission, as Your Honor knows, is chosen with geographical distribution throughout the country. We have on their way, for this hearing Monday, Commissioner Dean Storey, who is here this afternoon and he is from Texas. We have Commissioners from Florida, Virginia, Washington and Indiana. Under these circumstances, we submit, Your Honor, so long as the Commission holds the hearing in accordance with its Statute and rules, the issue of

constitutionality for the purposes of the restraining order does not happen to be raised with fundamental substance.

If the Commission is to be complete its job properly, as the Dean called attention to the statute, it will have to submit its report on September 9, or earlier.

We submit that the only alternative that we have is to go ahead with the hearing and give all adequate opportunity to those who wish to be heard to present their statements accordingly.

91

The Dean already cited the provisions under our Statute that call for an executive session.

Not only when it is anticipated testimony may arise which may tend to incriminate someone, but even if it might tend to defame some person in the slightest degree, that it may call for an executive session, and the Statute, in addition, provides——

The COURT. That is within the discretion of the Commission, itself?

Mr. TIFFANY. That is correct. May I point out, the Commission is constituted of five out of six attorneys, many of them of distinguished stature.

In connection with what we do not do, I would like to call attention to the Court, that we are, in no sense, a regulatory agency. We do not issue orders. I think that might well be a factor for consideration so far as the administrative procedure that might be concerned.

Statement by Mr. Bernhard

Mr. BERNHARD. I am appearing in the same capacity as Mr. Storey and Mr. Tiffany. Although, I am Staff General Attorney for the Commission, I am appearing as an employee of the Commission for a limited purpose, to discuss the restraining order.

Let me start out by saying that in the case of In re Wallace, the constitutionality of the Act under which we operate, was held to be lawful and constitutional; that it was a proper delegation to this Commission under the Fifteenth Amendment——

92

The COURT. I know Judge Johnson said that, but was that a direct issue in that case?

Mr. BERNHARD. Yes. They challenged the constitutionality.

The COURT. That does not appear from his opinion.

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Mr. BERNHARD. The challenge was made in that case, that the registrars did not have to respond to the subpoenas we had issued because we had no authority to issue them, and Judge Johnson ruled as to the constitutionality of the Act under which we operate and under our power to investigate allegations of discrimination, including voting.

The COURT. He didn't make it clear that the constitutionality of the Act was directly challenged. He did say, I believe, that the Act superseded any of the laws to the contrary by virtue of its origin in the Fifteenth Amendment.

Can you point to the exact language where he says it was challenged?

Mr. BERNHARD. Yes. This is on page 67 of the opinion: "The authority delegated to the Federal Government by the Fifteenth Amendment to the Constitution of the United
93 States is undoubtedly the authority under which the Congress of the United States was acting when the Civil Rights Act of 1957 was passed. The provision in the Act providing for investigation of alleged discriminatory practices, including inspection of voting and other pertinent records, must be considered to an essential step of the process of enforcing and protecting the right to vote regardless of color, race, religion or national origin. That part of the Act is, therefore, by this Court considered 'appropriate legislation' within the mean of Section 2 of the Fifteenth Amendment."

The COURT. Being appropriate and being constitutional might be two different things. I don't know, offhand.

Judge Johnson was operating under considerable pressure, as is this Court, at the time he rendered his oral opinion. It may be he meant to say that.

Mr. BERNHARD. By being appropriate legislation under the Fifteenth Amendment, and Section 2 says that Congress is empowered to pass legislation implementing the Fifteenth Amendment, it must, necessarily, be constitutional.

The COURT. At least, you think so.

Mr. BERNHARD. I think so, and I think the Judge could not have reached his decision to enforce these subpoenas——

The COURT. I am not going to comment on
94 the constitutionality, because I undoubtedly, would be one of the three judges of the Court which will be convened.

Mr. BERNHARD. I would like to take the case one step further, and I think it relates directly to the question of so-called damages which are alleged by the plaintiffs here.

In the same case, as you know, the Court ruled to the extent that the Federal Government is authorized to investigate voting complaints and seeing the records are incidental and necessary to that process, state laws contrary to those must yield.

In fact, the language, which I think Your Honor knows, part of it was that legislation enacted pursuant to the Federal Constitution is binding on all state officials, including the Judges.

There is further language on page 70 of the same case:

"In any event, regardless of their status, under Alabama law, registrars cannot be given any immunity from the exercise of a Federal function such as that involved in this case. To hold otherwise would be to say that the State of Alabama could thwart the Congress of the United States in any field
95 and deprive the Federal Government of its specifically delegated powers, here those delegated specifically by the Fifteenth Amendment to the Constitution, simply by saying that the state officers, such as the registrars, were judicial officers, or judges. That cannot be and it is not the law as this Court understands it."

The reason that it is important to emphasize this point, is that in this particular instance, we are not equating equal law. We are equating the Fifteenth Amendment to the Constitution with a law passed pursuant to state authority, and that where there is a conflict in an area of concurrent power, the state must yield.

Therefore, to talk in terms of irreparable damage at all is to anticipate and rule that the statute of the state is superior to that of the Federal Government.

The COURT. They are not talking about irreparable damage to the state. They are talking about irreparable damage to the registrars; isn't that correct?

Mr. GREMILLION. Yes, sir.

Mr. BERNHARD. That is perfectly correct, and that is the basis of the opinion in the case of In re: Wallace.

96 The complainants, at the same time, rely upon the case of United States versus Rainey.

The COURT. That was an action by the Attorney General himself.

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Mr. BERNHARD. That is correct. This case had nothing to do with the rights of the Commission.

The COURT. All Judge Davies did was to determine what was the meaning of "person."

Mr. BERNHARD. This leads me to another point which I would wish to emphasize very importantly: throughout the brief of the plaintiff, is reference to Greene vs McElroy, which they seem to give some juncture in their position on cross-examination.

In fact, I would like to point out that the gist of that opinion was that there was a failure of presidential or congressional authority to set up security clearance, and this must be emphasized: in that case, an individual was deprived of his liberty and his property by being deprived of a livelihood as a result of the security clearance regulations which had been established.

It has been stated by Mr. Tiffany that our Commission could not invoke such hardship on any individual. We have no power to make any rulings regarding discrimination——

The COURT. It is not the action of the Commission, as such. What they are complaining about is the result of the hearing itself and what might be developed in the hearing through witnesses making accusations against these people without them having the right to cross-examine, and without being advised in advance about who they are and what they will say.

97

That is the gist of this complaint, as I read it.

Mr. BERNHARD. What they are doing is anticipating that, in fact, the allegations we have received must, necessarily, be true and that they will have an adverse effect on the registrar, as a result. They necessarily must presume the lack of discretion and good faith on the part of the Commissioners, to this extent: they are anticipating the Commission will not consider the rights against self-incrimination, and to allow their attorneys to represent them and protect them against infringement of their constitutional rights.

The COURT. Let me ask you this: let us suppose that a complaining witness were to take the stand and to testify before the Commission; that one of these registrars from a particular parish involved flatly denied the witness the right to register because of his race. According to the complaint and brief, which they have filed, that would be an accusation of a

Federal crime. I forget the section of the Federal Statutes, but it is cited in their brief.

98 What they are complaining about is that such a witness, unknown to them until he takes the witness stand, is permitted to testify, unchallenged, that the registrar committed a crime. Whereas, if permitted to cross-examine, or if permitted to know in advance the name of the witness and the nature of his testimony, they might be able to thoroughly discredit that witness.

That is what they are complaining about, and I think, that is their most serious complaint.

Mr. BERNHARD. If it please the Court, we are acting under the same essential rules of procedure that Congressional committees operate under. That is a possibility when they conduct hearings. It is an inconceivable and remote possibility.

The consideration has to be made that in our hearings any individual who is either subpoenaed, or desires to submit a prepared statement, may do so, and those who are subpoenaed to come in and hear the testimony and are able to make their statements which could refute the testimony they now hear.

So, we are not in the same situation as are the people in the Greene case, who were never given an opportunity to see the people, or hear the accusations against them.

99 The COURT. That might well be a valid distinction in the Greene case as to this one.

Mr. BERNHARD. If the Court please, I think there are a few other points which I think are directly relevant and I would like to discuss them because they point out the distinction in our position.

The complainants cite Jones vs. Securities Commission; in that case there was a stop order against the issuance of a registration statement, and the failure by penalty to issue a proper registration statement is assessed by the SEC, itself. They are empowered to act directly upon those individuals.

We have no such power, and to the extent they rely upon administrative agencies, they are in no way relevant to the powers and authority given to this Commission. We go no further than finding facts and making recommendations to the Congress.

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Therefore, those cases they are relying upon, where a personal legal interest is affected directly by the action of an administrative agency, is not relevant.

The COURT. Has there ever been, before the passage of this Act, any branch of the executive department created by Act of Congress with similar powers?

100 Mr. BERNHARD. Your Honor, I am in no position to give a definitive answer on that.

The COURT. I am familiar with Congressional investigating committees.

Mr. STOREY. Since Your Honor asks the question, may I attempt to answer it?

The COURT. Yes.

Mr. STOREY. I happened to serve on the Hoover Commission. We were given subpoena power. We were directed to go into policy questions, and we were directed to issue subpoenas. I just know that one.

Mr. BERNHARD. May I proceed?

The COURT. Yes.

Mr. BERNHARD. There is another fundamental group of principals which complainants seem to overlook, or treat with some levity.

In order to be granted injunctive relief, they must establish clearly that there is no adequate remedy for them at law. There is an adequate remedy for them at law in this instance: they are in a position where they can go in and challenge the legality of a particular act, or of the rules of procedure, and only after they have exhausted that legal remedy can they come in and seek injunctive relief.

The COURT. Would that be a legal action, or equitable action?

101 Mr. BERNHARD. It would be a legal action.

The COURT. Would it be triable by a jury?

Mr. BERNHARD. I believe it would if they were found, for example, to refuse to testify and would be found in contempt of court in certain situations.

The COURT. You say it would be a legal action instead of an equitable action that would be involved.

Show me how such an action would be a legal action as distinguished from an equitable action?

Mr. BAUMAN. The parties, for example, could refuse, if they so chose, to ignore the subpoenas issued against them, and as enforcement of the rights of the Commission to see that its actions are carried out and they were then challenged and we sought a court order contesting it, they could seek a court order at that time.

The COURT. They would come to the Court for an order compelling production of documents?

Mr. BAUMAN. That is correct.

The COURT. I believe Judge Johnson signed such an order exparte, did he not?

Mr. BAUMAN. Yes, and during the subsequent proceedings to comply with the order, he dismissed the proceeding against Judge Wallace for various reasons factual to that case.

[10] One other point which complainants seem to rely upon rather heavily, is that the Commission failed to disclose the names of people that it is investigating, or may contemplate bringing to a hearing.

In our memorandum, we cited to the Court two cases which establish that the needs of confidentiality for proper internal administration of an agency are perfectly legitimate and legal, and that is all this Commission has done.

The COURT. At that point, let me interrupt to ask this question: if there is that need for confidentiality—and I can see your point on that—if you did not hold such complaints confidential, many people who might have complaints would be afraid to assert them. But, if that is necessary, they become known when they testify at the hearing, but not until then. So that, actually, you are protecting the confidentiality so far, but no further.

What is the point of that?

Mr. BAUMAN. The point of that is this: because of the, perhaps, remote, but the possibility of some type of counterclaim, or any type of reprisal which might conceivably be brought against any witness who seeks to testify.

All of our witnesses, as we contact them, are asked whether or not they are willing to testify in an open hearing. If

[11] they indicate in the affirmative, then we decide whether their story is legitimate, to the best of our ability, and they are brought in and subpoenaed to testify in an open hearing.

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The Court. Would the Commission give any consideration at all to a complaint whereby the witness was unwilling to testify at the open hearing?

I know the Statute provides for affidavits which may be filed, but perhaps I am asking a question I've got no business butting into.

Mr. Bernstein. It is a very relevant question, Your Honor.

The way that operates, if a witness were to testify, or to tell us that he, for some reason, is afraid to testify, he may ask to testify before the Commission in executive session. If he, at such executive session, testifies and the Commission determines his story may be credible, and subsequent to hearing this testimony it may decide he has given some type of testimony which may tend to degrade, or incriminate any party——

The Court. There is some section which requires notification of the party defamed, and let him make a reply.

Mr. Bernstein. Such person who may be degraded, or incriminated, has an opportunity to testify before the Commission after receiving notice of the contents of the
104 allegations which have been made against him, and that witness is allowed, upon request of the Commission, to subpoena additional witnesses. Under no circumstances, are any of the witnesses, or any of the registrars, in a position where they do not have an opportunity to answer allegations, or statements, made against them.

The fact that they all appear at the same time at a public hearing, or under the protection of an executive session, dispenses the notion that this is the type of proceeding which occurs in many security cases, where one never finds out the names, or sees the testimony or statements made against him.

Unless there are further questions, if the Court please, I have no more.

I thank you for the opportunity to state our position.

The Court. Do you wish to be heard, Mr. Gremillion?

Statement by Mr. Gremillion

Mr. Gremillion. Yes, sir.

May it please the Court, I have a few observations to make concerning the oral argument of Dean Storey, Mr. Tiffany and Mr. Bernhard.

In the first place, with reference to jurisdiction, let me read Your Honor a pertinent part of the registration laws, with reference to violations:

105 "Whoever violates this section shall be fined not less than $100 or more than $500 and imprisonment for not less than 60 days or more than 2 years."

The Dean says we have $8,000 possible maximum penalty——

Mr. STOREY. I thought this was a civil action?

Mr. GREMILLION. May it please the Court, may I continue?

Mr. STOREY. Excuse me.

Mr. GREMILLION. We have, in addition to that, the cost of transporting the records of 17 parishes—the entire office, which is what the subpoenas call for, to Shreveport.

The COURT. Is there any provision in your budget to pay the cost of that?

Mr. STOREY. Your Honor, as I recall, you tender them a per diem and mileage.

In Alabama, there was one registrar who brought some records in his own car.

The COURT. Depending upon the size of the parish and the population, the records would be larger or smaller.

106 Mr. STOREY. I don't think any fair construction of what they have been asked to bring is to remove their office to the hearing. That is not what the subpoena says.

Mr. GREMILLION. It calls for all of their records. It calls for their master files. That means they have to move every record to Shreveport.

I have read the Civil Rights' Act very carefully and the only remuneration is $4 a day for a witness to testify and mileage of 7¢ a mile, which they have to pay, but other than that there is nothing—absolutely nothing in the Act that provides for a refund of those particular costs.

We have 17 parishes where registrars have been subpoened, as far away as 250 miles from Shreveport—Franklinton, Louisiana.

In addition to that, one of these registrars could lose his job because he could be removed by the Board of Registration.

If that were to happen, the figure would be tremendous. You have the probability of the loss of a job.

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We submit, as far as the $10,000 jurisdictional question is concerned, our petition amply shows that it is in excess of that amount.

There is nothing in the Civil Rights' Act that provides
107 that the Commission has the authority to keep the complaint a secret.

I have studied that very carefully, and I find nothing——

The COURT. That is just done by their own rules.

Mr. GREMILLION. I will come to that, if Your Honor please.

The Commission, at a meeting in Atlanta, Georgia, passed a resolution saying they were going to keep the complaints secret, and they did that of their own authority and without Congressional or legal authority to do so.

I don't want to get personal about this, but we have been advised, and we are ready to testify upon the trial of this matter, that the Commission actually has complaints, or there have been press releases, that have emanated from Washington——

Mr. STOREY. If the Court please, I can't help but to object to an argument about what might be introduced in evidence on an application for a temporary restraining order.

I thought we were arguing to Your Honor, as a matter of law.

The COURT. We are arguing it, as I see it, on the basis of the allegations of the complaint as fairly
108 construed.

Mr. STOREY. If the allegations he has just stated, are in the complaint, I have no objection.

The COURT. I don't know what he is about to say.

Mr. GREMILLION. If Your Honor please, I don't know the paragraph, but in our complaint, we point out that the Commission has received complaints, and as a result of those complaints, they intend to hold a hearing.

I was elaborating on our knowledge, because I know personally—I have been advised by Mr. Tiffany time and time again that they do have complaints and that intend to investigate them and they did investigate them.

I was so advised by Colonel Rosenfeld, their investigator, when we held a preliminary hearing in Shreveport.

We have asked the Commission, time and time again, in Exhibit A and Exhibit B—we have asked them time and time again to tell us the nature of these complaints.

I have offered through Colonel Rosenfeld, an offer to which I have had no reply as yet, that the State of Louisiana was as interested in voter irregularity and discrimination on
109 the right to vote as the Federal Government.

Mr. STOREY. Your Honor, I have read this petition pretty carefully. I don't know of any allegation such as the statement he just made.

The COURT. I will let him go ahead for the reason that I permitted you and Mr. Tiffany to make background statements as to the Commission. He is generalizing as to the background of his side.

Mr. GREMILLION. We offered the Commission our assistance because we were interested in that matter just as much as the Civil Rights' Commission. To date, we have had no reply.

I am making this observation for this particular reason: we have called upon the Commission on innumerable occasions to tell us the nature of the complaints, the names of the complainants, and so forth, in order to assist them. We still have had no reply.

I have called the attention of the Commission to Louisiana law, time and time again. I have sent the Commission copies of opinions of the Attorney General's office. I have advised them of the conflict between Louisiana law and the rights of the particular Commission.

To solve this difficulty, the Civil Rights' Commission has done nothing, and it is because of that fact, it is neces-
110 sary for these registrars to bring the very action we filed today.

May I say this: the Civil Rights Act provides—I don't know the section—for a State advisory committee. The Civil Rights' Committee established a State Advisory Committee which exists in Louisiana today. I believe Mr. Rufus Lamar, of New Orleans, is the chairman of it.

The Commission has an ample remedy. They can work effectively through their State Advisory Committee. Through that committee, they could secure a registered voter in one of these parishes and examine the records. Through that committee, they could get 25 registered voters to look into the particular records. Yet, the Civil Rights' Commission ignores the existence of the Attorney General's office and ignores the provisions of the Louisiana law. Whether they are doing that wilfully, or what the reason for it is, I don't know.

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There is no necessity for a hearing. There is no necessity for an invasion of the Constitutional rights guaranteed to these registrars.

The COURT. I don't believe that question is before the Court. What we have to decide is the validity.

Mr. GREMILLION. I think it is relevant for this reason: I am trying to show you the necessity for the issuance of a temporary restraining order, and to show you the necessity for the
111 filing of this suit, and that is why I considered my remarks relevant on that point.

The COURT. In other words, I don't believe this Court would be within its rights in examining into the motives of the Commission. We know what they are doing, and it is either right or wrong. That is what we have to decide.

I would like to hear from you on the question of mootness, which I raised a while ago.

I don't believe either side touched that, that is, whether or not plaintiffs' rights would be lost if the restraining order were not issued—if this hearing were permitted to proceed.

Mr. GREMILLION. Let me say this: if this hearing is conducted on July 13, as scheduled, every right that the registrars have and that we are complaining of this particular petition will be lost.

Counsel says they talk to a complainant and discuss his testimony as to whether he will be willing to come in and testify, or not, but we don't know who they are. We have no way of knowing whether they will be present, or not. We have no way of knowing whether a particular complainant will be here. That information is afforded the registrars and it naturally follows that the registrars are being accused, or else they wouldn't be subpoenaed.

Let me make a comment regarding the Commission's
112 rules, and I would like to show that they are most impractical.

Suppose someone came up—and I understand this is supposed to be a one day hearing—suppose someone came up here and testified that the Registrar of Voters in Washington Parish had defamed him, or deprived him of his constitutional rights, and says something that would be injurious to that registrar. How am I, as his attorney, under the law, able to run to Washington Parish and find someone to thoroughly dis-

credit that testimony in time to bring them to this very hearing?

The damage will have been done. In common parlance, the horse will be out of the gate, and we have no remedy to protect those particular individuals. It stands to reason if this hearing is held, that the damage will have been done, and the serious points we raise—I am not going over them again because the Court is familiar with them—the points we raise will be completely lost, and the irreparable damage will not be able to be cured.

Mr. Lassiter would like to make a few remarks.

Statement by Mr. Lassiter

Mr. LASSITER. If it may please the Court, I merely wish to sum up, if I may, my understanding of the opposition to this temporary restraining order as made by Dean Storey and Mr. Bernhard and Mr. Tiffany.

113 As I understand their argument, it is this: on Monday, they will bring these complaining witnesses and place them on the stand and they will give testimony. Then, these complainants in these suits can be placed on the stand and take the Fifth Amendment and that then the Attorney General can come in and ask this Court for an order to bring in their records and then they can put themselves in contempt of this Court in order to attack the constitutionality of this Act.

The COURT. I think the orderly way to handle a matter of that kind is that if the restraining order is denied and if the registrars do decide to stand on their rights as they conceive them, and not testify, or not produce the records, then any application by the Attorney General for an order compelling their production, in my opinion, properly should wait until after the constitutionality is passed upon.

With that observation, you might proceed.

In other words, this Court will not issue such an order until the constitutionality of the Act is passed upon by a three-judge court.

Of course, in the meantime, time is running out.

Mr. LASSITER. We have been asked to assume that Dean Storey, who is only one member of that commission, and whom we all know and respect, can speak for that

114 Commission. That is not correct, there are five other

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members who may come in here Monday morning and say, "Dean, we like you, but you haven't expressed our feelings in that matter at all."

Mr. Tiffany is Director. He hasn't said there is going to be cross-examination of any witness.

As far as this Court knows, and as far as this matter is concerned today, we don't know that any witness will be here. The only witnesses that we know will be here are the 24 that have been subpoenaed through this Marshal's office. We have no way of knowing, and this Court cannot assume, one witness will be here, because Mr. Bernhard's statement was that if they agree to come, they will bring them. He didn't say one of them had agreed.

Colloquy

Mr. GREMILLION. Judge, may I make one remark about the mootness matter.

The COURT. Yes.

Mr. GREMILLION. Of course, the Act of Louisiana makes the Attorney General the representative of the Registrar in a matter of this kind, but I want to call the Court's attention particularly to the rules in Section 2(C). It only provides that the witness who is subpoenaed may bring his attorney to advise him as to his constitutional rights, and that's all.

115 The COURT. The rules expressly prohibit cross-examination.

Mr. GREMILLION. That is correct.

Suppose Mr. Charlie Mitchell, of Caddo Parish, was accused? I wouldn't have the right to cross-examine that individual. I would have no right to protect him, and that is a matter that has to be passed on.

The COURT. Let me ask Dean Storey this question:

Would you mind telling the Court, Dean, why cross-examination was written out? Was that because of the length of time the hearing would take, or something else?

Mr. STOREY. Your Honor, I was going to comment on this mootness, and I will try to answer the question as best I can.

You will notice the Act says, "may conduct informal hearings". It is fact-finding. Under the rules, we provided they may be represented by counsel.

Another thing, they are purely informal. This 2(e), I think, takes care of a lot of things we have been talking about.

"If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or in-
116 criminate any person, it shall receive such evidence in executive session; afford such person an opportunity voluntarily to appear as a witness; and receive and dispose of requests from such person to subpoena additional witnesses."

From our experience, nobody has asked that it be handled in exactly that way.

The COURT. What they are saying is that they are entitled, at least, to ask the witness, "have you stopped beating your wife?"

Mr. STOREY. The only thing I can say, without going into the legislative intent, it is not an adversary proceeding. It is not under the administrative procedure act as we understand it, and it is informal.

We have never held these hearings at length. Counsel have been present and counsel have advised their people.

May I, while I am on my feet, since Your Honor asked me to comment, may I say one thing further?

The COURT. Yes.

Mr. STOREY. The Attorney General made much of the fact that we have asked them to bring all these records of all of their offices, and move their offices.

117 Here is what the subpoena says to bring:

"1. All records contained in master record file and closed and disqualified file, from January 1, 1957, to July 1, 1959, as required by a certain Act;

"2. All applications and disposition of such applications for copying, photographing or photostating records from January 1, 1957, to July 1, 1959."

All I am trying to say is that it limits it to those particular times.

"3. All notifications of citations to erase and answering affidavits of challenged voters and supporting witnesses, from January 1, 1957, to July 1, 1959;

"4. All rules and regulations issued by the State Board of Registration from January 1, 1953, to July 1, 1959;

"5. All letters, notices, memoranda or opinions concerning administration of the Registration Laws received from the joint legislative committee."

118 I don't see that that takes any very big bulk, if the Court please.

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Thank you.

Mr. GREMILLION. My only reply is that I would like to enlighten the Dean and tell him the records are quite voluminous and tremendous.

I appreciate his sincerity. I do not question his sincerity. I respect him very highly, but nevertheless, the difficulty and trouble involved is stupendous.

I am sure this Court is perfectly familiar with the records of a Registrar's office.

The COURT. Just casually familiar, I would say.

Mr. GREMILLION. Just one more thing, Judge, and I will stop.

Again, I talk about the sincerity of the Commission and their desire to treat this matter confidentially. I quite agree that is a very fine thing, but we are not a nation of men. We are a nation of law, and the withholding of the names of the complainants is against every principle of law in this nation.

The Supreme Court of the United States stated that very clearly in Greene vs McElroy, which was handed down by Chief Justice Warren, the organ of the Court, on June 29, 1959.

119 The COURT. You mean you agree with the United States Supreme Court?

Mr. GREMILLION. In this instance.

Mr. SHAW. May I be heard, Your Honor?

The COURT. Yes.

Mr. SHAW. In line with what the attorney general just said, Your Honor, I am sure you are familiar with that quotation of Jefferson in Matters Pertaining to our Constitutional Rights:

"Let nothing more be said of confidence of matter, but bind them down by fact and the constitution."

What he meant there is exactly what we are confronted with today. Regardless of how much we might think, as individuals, we should not entrust our sacred rights in the committee of individuals and let them protect it as opposed to law.

In this case, we must examine the matter from the standpoint of law, and not what we might think of the motives of the members of the Commission. I don't think even the members of the Commission would argue with that, for the Court to do that.

I would like to go back and look at what this Act, and particularly the rules which have been served on my client,
120 would permit this Commission to do. That is the test. Not what they might actually do, but what they do.

The first thing we have to consider is that we alleged, and as the Attorney General alleged in this proceeding, we alleged the hearing is purportedly conducted under that section of the Civil Rights' Act which directs and requires investigation of complaints made in writing, under oath, charging a deprivation of civil rights in connection with the right to vote on account of race, color, creed, religion, etc.

Since that is the basis of this hearing, and we are alleging it for the purpose of this particular matter, we should take the allegations as true. It necessarily involves a charge of criminal conduct. It necessarily involves an action in damages against these parties in the complaint.

This proceeding, as is contemplated, would be a fact-finding proceeding to investigate these particular charges against our people.

Under those circumstances, I requested from Colonel Rosenfeld, personally, and subsequently requested from Mr. Tiffany, by letter, to furnish us the complaints against one or more of these particular people whom we represent.

121 I received a letter stating that the Commission adopted a policy declining that information to anyone except staff members.

This is directly and specifically what was involved in the Greene case.

The COURT. I have read that case.

Mr. SHAW. That case did not involve the adjudication of this man's right to hold a job. It simply discussed whether or not this man would be cleared for the privilege of reading classified information.

Indirectly, the court found this would cut down on his job opportunities. It may result in the loss of his job.

That is exactly what we are alleging here. Indirectly, their actions would have the effect, first of all, of jeopardizing the positions of the registrars and my clients in their several occupations.

Your Honor is familiar with that line of cases, that the action of a registrar of voters under an unconstitutional statute

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does not protect that registrar of voters from civil and criminal penalty.

If these registrars of voters, or these other people, come up here pursuant to these subpoenas and the subpoenas turn out in the end to be unconstitutionally issued, that will not protect them. They will still be liable to the State of Louisiana
122 for acting without authority to come here.

That is the jeopardy beyond any $10,000 jurisdictional amount involved in this case.

It is inconceivable to me that such a thing can occur in our day and age.

Your Honor read this Act and listened to these gentlemen say what could happen. Mr. Bernhard said they asked a witness whether or not he wishes to testify at an open hearing. I presume, if he said he does not wish to testify at an open hearing, they will permit him to testify in executive session. An executive session is not going to permit our clients to be present—certainly, if it were possible for us to be excluded under the Act, they would exclude us.

Secondly, our clients, these registrars, under the terms and provisions of this Act, can be called into executive session, whether they want to be in executive session, or not. They can be forced to testify, and that portion of the testimony which the Commission might want to release it can release. It can withhold a portion that they don't want to release. It is a power granted them by this Act.

Should our clients come out and say they gave part of the testimony, and this second part would explain what I
123 meant, but the first part would change the entire meaning, our clients could be subjected to fines and imprisonment under terms of the Civil Rights' Act.

I believe the last type of commission that was constituted was under James 1st of England. That was the very reason Lord Coke issued writs and got in such trouble. They wouldn't let them know who testified against them, but they told them "you have been charged. What do you say?"

It is inconceivable to me that such a thing could exist in an Anglo-Saxon country. We know it exists in Russia and Nazi Germany, during our time.

I never thought I would be in Court, in my life, arguing toward the United States against this type of action. I think it is a crime and a disgrace.

I want to, again, emphasize I make no personal reflection on the members of the Commission.

I might say that the members of the High Commission in England were people of the finest character. They were nobles.

History reflects that Bartholemew in France massacred the Huguenots and that was done under the guise of doing something for the betterment of the world and the betterment of religion.

In England, at various times, the Puritans were
124 persecuted and the Puritans persecuted other people.

We thought we had gotten rid of that. We thought we got rid of it when England threw out the type of proceeding known as a Star Chamber Proceeding, but here we are in the Twentieth Century having to face the exact type of thing that no one, in our memory, has had to face in an Anglo-Saxon country, and I think the Court should act on its own motion and prevent it from occurring in our country. To me, it is inconceivable.

I would like to ask Dean Storey, who is an imminent attorney, to consult with the other members of his Commission to see if they cannot revise the so-called rules. Part of this is in the Act, but their recommendations to Congress are supposed to be for the protection of civil rights. I presume that covers the civil rights of white, loyal Americans, who reside in the South, as well as the colored.

If they are concerned with Civil Rights and the abuse, they should recommend to Congress this Act be changed, radically, and that a type of proceeding which we all recognize as fair be substituted in its place.

If this is not irreparable injury we are talking about—the most fundamental rights of individuals being violated—then,

I certainly don't know what irreparable injury is.
125 As Your Honor pointed out, the crux of this matter is a question of constitutional rights and not so much technicalities of law. You are bound by the technicalities of procedure, and any Court is, and those of us who follow the law know the rules of procedure are made for the protection of people, not for their operation.

We ask this Court, and I am asking the members of Civil Rights' Commission to re-examine this entire matter so that the rights of this country will not be sold down the river, under

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the guise of a person claiming to have his civil rights violated and who doesn't face his accuser and the charges are kept secret.

Mr. TIFFANY. If the Court please, I have about four points I would like to make quickly. First, as to the confidential nature of these complaints: this very instance is one where we believe we have good reason for the confidential nature of these complaints.

Mr. Shaw referred to his letter requesting the names of these parties, and the purpose was to charge these people with perjury before a Grand Jury.

With respect to the matter of cross-examination, as I said earlier, and I would to emphasize again, this Commission is functioning as a fact-gathering arm to collect facts and present them to Congress in very much the same way as
126 any committee of the Congress might do. It is a perfectly proper delegation which has been done time and time again.

We conduct our fact-finding in the same manner as any Congressional Committee has been doing, and these rules we have adopted have come about by considering the fair way to conduct a hearing.

The Attorney General said the Commission has done nothing to avoid the necessity of a hearing. Nobody knows better than the Attorney General to what extremes we went to try to avoid the necessity of the hearing.

The Commission prepared questionaires in accordance with the discussions we had with the Attorney General. They were exhaustive questionaires. The questions pertained to matters which will make it entirely unnecessary for us to have the testimony, or have the witnesses, before us. We hoped we might have answers to that. The Attorney General protested, and they advised reasonable compliance will be given consideration by the Commission and they were advised to note objections to the questions and those objections would be given consideration.

I submit it is entirely possible we would not be here today if we were able to successfully pursue these alternate courses.

As I said earlier, the Commission does not undertake
127 a hearing lightly, and we did not in this instance.

Mr. Shaw made the statement that Section 1, with respect to investigation of complaints, is the sole section upon

which we may hold hearings. We may hold hearings whenever necessary to carry out the functions of the law, which include the study and collection of information which may develop legal developments which tend to show——

Mr. SOLAR. What I meant to say, we have been informed, and believe, the purpose of this particular hearing was to investigate allegations made in writing, under oath, charging a denial by these people of certain things. It was not that you did not have the power to hold otherwise.

Mr. GREENBERG. The rules provide that the very first act of the chairman is to announce the subject matter of the hearing.

We can't go into the hearing until we know what it is about.

Even today, at 5:32 P.M., we don't know what it is all about and Monday morning is the hearing.

Mr. TUTTLE. There are rules provided by the law and the Congress itself that the purpose of the hearing will be clearly stated by the person who is the chairman of the hearing.

120 The COURT. He said that is too late.

Mr. TUTTLE. Finally, I wanted to say that we are not in the process of adjudication. The objection to a Star Chamber Proceeding might have some bearing. We do not adjudicate.

Mr. GREENBERG. We did meet in a very friendly conference with members of the Commission, and I would have advised the registrars to answer those questionnaires had they been relevant and had they been material and had the questionnaires been related to their work.

But, the answering of those questionnaires—there were 315 questions—they were abusive, intolerable, immaterial and would have exposed registrars to possible criminal prosecution even if they had attempted to answer them in all frankness and candor.

If those questionnaires had been such that we could have answered them, it would have been done.

For instance, one of the questions said: "How well do you know the man who got you your job?"

The COURT. I have read the questionnaire.

Mr. GREENBERG. One of the questions was, that if a man comes to register and is a member of the NAACP, are you going to treat him fairly?

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129 How can that be relevant to a registrar of voters' duties? How can he know whether an individual, coming up to register, is a member of the NAACP?

The Court. That is not before the Court.

Mr. Gremillion. I understand, but I didn't want the Court to get the impression that Louisiana did not try to cooperate.

I offer the Commission, now, our complete cooperation if you will work with us. Give us the nature of the charges and allow us to face our accusers and we will work with you. If we find a registrar who isn't doing his duty, I will recommend to the Board of Registration that he be fired.

Thank you, very much.

The Court. Gentlemen, I will work on this tomorrow and probably it will be Sunday before I can issue my decision.

Court is adjourned.

[Reporter's certificate to foregoing transcript omitted in printing.]

131 In United States District Court for the Western District of Louisiana, Shreveport Division

Pre-trial exhibits & pertinent statutory provisions

Filed July 12, 1959

[File endorsement omitted.]

132 *Exhibit A to pre-trial brief, etc.*

RULES OF PROCEDURE FOR HEARINGS OF THE COMMISSION ON CIVIL RIGHTS

1. Under Public Law 85-315, Section 105(*f*), the Commission on Civil Rights may hold hearings and issue subpenas or authorize a subcommittee to hold hearings and issue subpenas under the following conditions:

"The Commission or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accord-

ance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman."

2. All such hearings of the Commission will be governed by the following statutory Rules of Procedure provided in Section 102 of Public Law 85-315:

"(a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

"(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

153 "(c) Witnesses at the hearings may be accompanied by the own counsel for the purpose of advising them concerning their constitutional rights.

"(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

"(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

"(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

154 "(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

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"(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 5 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business."

3. In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

"(a) All the provisions of Section 302 of Public Law 85-315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 302(c) of Public Law 85-315, incorporated in Rule 1 above. 155

"(b) At least two members of the Commission must be present at any hearing of the Commission or of any subcommittee thereof.

"(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at a meeting at which at least a quorum of two members is present.

"(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission or the Chairman or by the Chairman upon the request of a member of the Commission.

"(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee

appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

"(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may
156 be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

"(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

"(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

"(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

"(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

"(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, maga-
157 zines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap."

4. Public Law 85-315, Section 105(g) provides that in case of contumacy or refusal to obey a subpena of either the Commission or a subcommittee thereof, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the

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District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(As approved and adopted by the Commission July 1, 1958.)

158 *Exhibit B to pre-trial brief, etc.*

Public Law 85-315

85th Congress, H.R. 6127

September 9, 1957

AN ACT

71 Stat. 634

To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Civil Rights Act of 1957

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE OF THE COMMISSION

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

Evidence or testimony

Release

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken

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in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

71 Stat. 635

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

Witness fees

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."

Reports to President and Congress

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this Act.

Termination of Commission

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

159 71 Stat. 636

POWERS OF THE COMMISSION

Staff director

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and

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with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $50 per diem.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99).

62 Stat. 697 *et. seq.*

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

Hearings, etc.

Subpenas

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accord-

ance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

71 Stat. 637

PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

62 Stat. 932

SEC. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read,

"§ 1343. Civil rights and elective franchise"

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(b) Delete the period at the end of the paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Repeal

SEC. 122. Section 1989 of the Revised Statutes (42 U.S.C. 1993) is hereby repealed.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U.S.C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, four new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

160 "(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

71 Stat. 637

71 Stat. 638

"(e) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel."

PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPTS OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

Criminal contempt

Penalties

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: Provided however, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: Provided further, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: Provided further, however, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of

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the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases.

Nonapplicability

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

62 Stat. 951

SEC. 152. Section 1861, title 28, of the United States Code is hereby amended to read as follows:

"§ 1861. Qualifications of Federal jurors

71 Stat. 638

"Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

"(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(2) He is unable to read, write, speak, and understand the English language.

"(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service."

Short title

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

Approved September 9, 1957.

Exhibit C to pre-trial brief, etc.

(a) Notice of hearing and issues.

Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

UNITED STATES CODE, TITLE 5, SECTION 1005

Hearings; presiding officers; powers and duties; burden of proof; evidence; record as basis for decision.

In hearings which section 1002 or 1004 of this title requires to be conducted pursuant to this section—

(a) There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this chapter; but nothing in this chapter shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 1007 of this title shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences

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162 for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 1007 of this title, and (9) take any other action authorized by agency rule consistent with this chapter.

(c) Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 1007 of this title and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary. (June 11, 1946, ch. 324, § 7, 60 Stat. 241.)

163 *Clerk's note*

Exhibit D to pre-trial exhibits, etc. "Subpoena issued to Mrs. Margaret M. Larche, Registrar of Morehouse Parish," printed side page 20 supra.

164 *Clerk's note*

Exhibit E to pre-trial exhibits, etc. "Letter from Gordon M. Tiffany to Mr. W. M. Shaw, dated April 14, 1959," Printed side page 17 supra.

185 *Clerk's note*

Exhibit F to pre-trial exhibits, etc. Telegram from Gordon M. Tiffany to Honorable Jack P. F. Gremillion," printed *side* page 19 *supra*.

166 In United States District Court for the Western District of Louisiana

CONSTITUTION OF THE UNITED STATES

ARTICLE I, SECTION 1

Section 1. Legislative power vested in Congress.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

AMENDMENT IV

Amendment IV—Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V

Amendment V—Capital Crimes; Due Process

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. * * *

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[redacted]

LOUISIANA REVISED STATUTES, SECTION 18:221

§ 221. Violations generally; successive offenses

No person shall violate any provision of this Chapter for which no penalty is specifically provided, or wilfully fail or refuse to perform an act or duty required under this Chapter.

Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense.

168 LOUISIANA REVISED STATUTES, SECTION 14.134

§ 134. Malfeasance in office

Malfeasance in office is committed when any public officer or public employee shall:

(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

(2) Intentionally perform any such duty in an unlawful manner; or

(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

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169 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Civil Action No. 7480

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

[File endorsement omitted]

For the Plaintiffs in Civil Action No. 7479

Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana; George M. Ponder, First Assistant Attorney General, State of Louisiana, Baton Rouge, Louisiana; William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana; Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana; M. E. Culligan, New Supreme Court Bldg., New Orleans, Louisiana; John E. Jackson, Jr., New Supreme Court Bldg., New Orleans, Louisiana; William P. Schuler, New Supreme Court Bldg., New Orleans, Louisiana; N. Cleburn Dalton, 140 St. Louis Street,
170 Baton Rouge, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Albin P. Lassiter, Ouachita Parish Court House, Monroe, Louisiana; Fred Jackson, Homer, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Cameron C. Minard, Columbia, Louisiana; Lester Hughes, Natchitoches, Louisiana; Richard H. Kilbourne, Clinton, Louisiana; France Watts, Franklinton, Louisiana; J. Reuel Boone, Many, Louisiana.

For the Plaintiffs in Civil Action No. 7480

Mr. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana.

For the Defendants

Messrs. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; Berl R. Bernhard, Attorney for Commission on Civil Rights; A. William Mottolese, Attorney for Commission on Civil Rights; C. E. Clark, Legal Assistant to the Honorable Robert G. Storey.

BEN C. DAWKINS, Jr.,
Chief Judge.

171–177 *Ruling on applications for temporary restraining orders*

Filed July 12, 1959

We are called upon here to pass tentatively upon one of the burning issues of our time—the propriety and validity of the Rules and Proceedings of the Civil Rights Commission, as established by Congress in September, 1957.[1]

That Commission now proposes to hold a hearing, in the Federal Court room at Shreveport, Louisiana, on July 13, 1959, to investigate purported violations of the civil voting rights of some 67 persons, who are said to have filed sworn complaints with the Commission. Pursuant to, and in implementation of, its plans, the Commission has caused subpoenas, and subpoenas duces tecum, to be served upon the plaintiffs in these suits, commanding them to be present and give testimony at the hearing, and requiring the 16 Registrars of Voters, who are plaintiffs[2] in Civil Action No. 7479, to bring with them, for inspection and copying by the Commission, a large number of records from their offices.

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[1] Public Law 85-315, 71 Stat. 634, 42 U.S.C.A. § 1975a-c.

[2] These plaintiffs are the duly appointed and constituted Registrars of Voters in the Louisiana Parishes (counties) of Morehouse, Ouachita, Webster, Bossier, Claiborne, Bienville, DeSoto, East Carroll, Madison, Jackson, Red River, Caldwell, Caddo, East Feliciana, West Feliciana, and Washington, all but the last three of which are located in the northern part of the State.

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These suits, brought against the members of the Commission, and the Commission itself, were filed on July 10,
178 1959, and are addressed to the equitable powers of this Court.[3] They seek to stay the effectiveness of the Commission's subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing itself,[4] which, plaintiffs aver, under the Rules of Procedure adopted by the Commission, would violate their fundamental constitutional rights and cause them immediate and irreparable damage. Moreover, praying that a three-judge court[5] be convened for that purpose, the Registrar-plaintiffs ask that the Act creating the Commission be declared[6] violative of the Federal Constitution, and thus unenforceable.

Detailing their complaints, supported by sworn affidavits and exhibits attached, (and here briefly paraphrased), the Registrar-plaintiffs, in Civil Action No. 7479, allege that between June 29, 1959, and July 6, 1959, each of them were served with subpoenas and subpoenas duces tecum, issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959, and to bring their records with them; that they have not been informed of the nature of the complaint or complaints against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has
179 informed the Attorney General of Louisiana verbally and in writing,[7] that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine the written complaints filed against them, nor would it divulge the name or names of the secret complainants, all of which is arbitrary and unreasonable, and in violation of plaintiffs' fundamental rights.

They further aver that they, at all times, have complied with the laws of the State of Louisiana, but that the subpoenas

[3] Also alleging jurisdiction in this Court based upon Federal questions, 28 U.S.C.A. § 1331, and Diverse Citizenship, 28 U.S.C.A. § 1332.

[4] Pursuant to 28 U.S.C.A. § 2284(3).

[5] 28 U.S.C.A. §§ 2282, 2284.

[6] Under the Declaratory Judgment Statute, 28 U.S.C.A. § 2201, et seq.

[7] The writings are attached to the complaint.

served upon them would require them to violate such laws,[8] in that the Registrars' records legally may not be removed from their offices, except "upon an order of a competent court", criminal penalties being provided for violations of these
180 statutes;[9] and that the Commission is not a "competent court". Hence, they say, to comply with the subpoenas, they would be violating the State laws, and subjecting themselves to the penalties thus provided.

These plaintiffs further allege that, attached to the subpoenas served upon them, was a mimeographed document entitled "Rules of Procedure for hearings of the Commission on Civil Rights" in which appears the following: "(1) Interrogation of witnesses shall be conducted only by members of the Commission or by authorized staff personnel"; and that thereby plaintiffs are deprived of their constitutional right to cross-examine witnesses who may testify against them. They contend that the Commission and its members thus are acting in an ultra vires manner in 1) attempting to force plaintiffs to testify at the proposed hearing without first advising them of the nature of the complaint or complaints existing; 2) without allowing plaintiffs to be confronted by the complaining witnesses; 3) not allowing plaintiffs to have counsel em-

[8] L.S.A.-R.S. 18:169. *"Control and custody of registration books and other records.*

"The books of registration, together with all the records, registry stub books, and all other books and paraphernalia used for the conduct of the registrar's office, shall at all times be kept under the control of and in the custody of the registrar at his principal office. They shall not be removed therefrom for any purpose except upon an order of a competent court, except the parish register and registration certificate books when these are necessary for the registration of voters, when registration is permitted at places other than at the central office.

L.S.A.-R.S. 18:251. *"Custody of records.*

"Except as otherwise provided in this Title, the registers, records, files, books, and paraphernalia used for the conduct of the registrar's office shall at all times be kept under the control and in the custody of the registrar at his principal office and shall be removed therefrom only on order of a competent court. Added Acts 1952, No. 415, § 2."

[9] L.S.A.-R.S. 18:221. *Violations generally; successive offenses.*

"No person shall violate any provision of this Chapter for which no penalty is specifically provided, or willfully fail or refuse to perform an act or duty required under this Chapter.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense."

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powered to fully represent their interests in such hearing; 4) not allowing cross-examination of the complaining witnesses; and 5) causing irreparable damage to plaintiffs by requiring them to violate the Laws of Louisiana, which would subject them to serious criminal penalties. In their brief, they also urge, as a direct incident of the hearing itself, with unnamed and unknown witnesses testifying against them, not subject to cross-examination by plaintiffs' counsel, that
181 they will be wrongfully accused of violations of both Federal [10] and State [11] laws, without adequate opportunity to disprove such accusations, and thus be held up, by the Commission's actions, to public opprobrium and scorn, all to their irreparable injury and damage.

They further contend that the Commission, being an agency of the Executive branch of the Federal Government, is subject to the provisions of the Administrative Procedure Act,[12] and,

[10] 18 U.S.C.A. § 242. *"Deprivation of rights under color of law.*

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

42 U.S.C.A. § 1983. *"Civil action for deprivation of rights.*

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979."

[11] LSA–R.S. 14:134. *"Malfeasance in office.*

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

And see LSA–R.S. 18:221, fn. 9.

[12] 5 U.S.C.A. §§ 1001, et seq.

as such, is required to state explicitly the charges against plaintiffs, to permit them to be confronted with the witnesses against them, and to allow their counsel fully to cross-examine such witnesses. Accordingly, these plaintiffs seek the relief hereinabove outlined.

182 In general, the plaintiffs in Civil Action No. 7480, who are individual citizens of Louisiana, make the same allegations and contentions as those in No. 7479, except that they have not been called upon to produce any official records. They do not challenge the constitutionality of the Act creating the Commission, but otherwise their prayer for relief is substantially similar to that in No. 7479.

Several days prior to July 10, 1959, we were advised by plaintiff's counsel that they would file these suits on the date indicated. While, as a general rule, applications for temporary restraining orders are considered ex parte, solely on the face of the verified complaint and any attached documents, because of the national importance of the matters involved, we immediately notified counsel for the Commission, and its Vice-Chairman, Honorable Robert G. Storey (a personal friend of the Court's, of long standing) of our information, and invited them to be present for a hearing on the applications. The suits were filed at 1:30 P.M. on July 10, and at 2:00 P.M., in open Court, these gentlemen, and counsel for plaintiffs, being present, we convened Court, but immediately recessed in order to give the Commission's representatives opportunity to study the complaints and briefs filed by plaintiffs. At 3:30 P.M., we reconvened and heard oral arguments, from both sides, until 5:20 P.M., at which time the matter of the restraining orders was submitted for decision on the oral arguments and briefs filed by the proponents and opponents of the applications. We have considered the able arguments, studied the respective briefs and authorities cited, and now proceed to our ruling. Necessarily, because of the time element, we have been compelled, under great pressure, to consider the questions rather hastily; and we reserve the right to alter ourviews, if necessary, after more mature deliberation.

183 The Court has jurisdiction. 28 U.S.C.A. §§ 1331, 1332, 2201, 2282, 2284. *Jones* v. *Securities Commission*, 298 U.S. 1, 56 S. Ct. 654, 80 L. Ed. 1015.

We are not strongly impressed with the Registrar-plaintiffs' contention that the subpoenas duces tecum if complied with,

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would subject them to criminal penalties under Louisiana law. Literally, of course, if they directly complied without more, they are correct in their understanding of the State law. Practically, however, another and different aspect is presented, for under the Civil Rights Commission Act they can refuse to produce the records, without penalties of any kind, and the only recourse the Commission would have would be to request the Attorney General of the United States to apply to this Court, under 42 U.S.C.A. § 1975d(g) [13] for an order requiring their production. Plaintiffs then would be protected against
State prosecution by the very terms of LSA–R.S.
184 18:236,[14] as well as by LSA–R.S. 18:169 (see fn. 8),
for this Court clearly is a "competent court", within the meaning of those Statutes.

Likewise, plaintiffs would suffer no immediate federal penalties under the Act for refusal either to appear or to testify,

[13] "*Aid of courts in enforcing subpoenas.*

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Pub. L. 85–315, Part I, § 105, Sept. 9, 1957, 71 Stat. 636."

[14] "§ 236. *Alteration, defacing, destruction or removal of records; penalty.*

"No registrar, deputy, clerk, or employee of any registrar, or any person having, or having been given access to, or right of inspection, copying or photographing of any book, card, record, or other document pertaining to the registration of voters, shall illegally or improperly alter, add to, deface, destroy, or remove same from the custody of the registrar.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than sixty days nor more than two years. However, nothing in this Section prevents a competent court from requiring, by proper order, the production by the registrar in court, in any proceeding pending therein, of any document, book, card, or record necessary and material, in the opinion of the court, to the determination of the proceeding; such documents do not become permanent records of the court, but shall be returned to the custody of he registrar immediatley after inspection by the court. The court may require a photostatic copy thereof to be placed in the record. Added Acts 1952, No. 415, § 2."

but would be subject to an enforcement order from this Court, which would see to it that their constitutional rights against self-incrimination are adequately protected. Moreover, under the Act, since their counsel are entitled to be present, they could be advised, at each step of the proceedings, whether to claim the protection of the Fifth Amendment, even though, in this day, the general public has come to consider such a claim as tantamount to a plea of guilty, particularly in response to "loaded" questions.

We are strongly of the opinion, however, that plaintiffs' remaining grounds for immediate relief are well taken:

First, it appears rather clear, at this juncture, that the Civil Rights Commission is an "agency" of the Executive branch of the United States, within the meaning of that term as
185 defined at 5 U.S.C.A. § 1001(a).[15] See also 42 U.S.C.A. § 1975(a).[16] It performs quasi-judicial functions in its hearings, its fact findings, its studies of "legal developments constituting a denial of equal protection of the laws under the Constitution", and its appraisal of "the laws and policies of the Federal Government" in the same respect.[17] It "adjudi-

[15] "(a) 'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, * * *."

[16] § 1975. *Commission on Civil Rights—Establishment.*

"(a) There is created in the *executive branch* of the Government a Commission on Civil Rights (hereinafter called the 'Commission')." [Emphasis supplied.]

[17] 42 U.S.C.A. § 1975c. *"Duties; reports; termination.*

"(a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

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cates" by its rulings upon the admissibility of evidence at its hearings and by its determinations of what is or is not the truth in matters before it. Thus we think that the Commission is subject to the provisions of section 4 of the Administrative Procedure Act,[18] which requires, among other things that persons affected by agency action "* * * shall be timely
186 informed of the matters of fact and law asserted." Here that would encompass the nature of the charges filed against plaintiffs, as well as the matters of fact and law wherein the complainants' voting rights allegedly have been violated. The Commission also is subject to section 6 which would require it to grant plaintiffs the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts."[19] This, by its Rules, the Commission refuses to do, and in so doing, regardless of its well intentioned motives, it violates the terms of that Act. Plaintiffs are entitled, therefore, to protection against these Rules, which would deprive them of their plain rights under the Act.

Second, while the statute creating the Commission inferentially permits it to adopt reasonable Rules, 42 U.S.C.A. § 1975 (b), there is no provision whatsoever in the law to the effect that such Rules may include those here complained of, which

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"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957."

[18] 5 U.S.C.A. § 1004. "*Adjudications.*

* * * * *

"(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) *the matters of fact and law asserted.* * * *" [Emphasis supplied.]

[19] 5 U.S.C.A. § 1009. "*Hearings, presiding officers; powers and duties; burden of proof; evidence; record as basis for decision.*

* * * * *

"(c) * * * Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. * * *"

plainly violate plaintiffs' basic rights to know in advance with what they are charged, to be confronted by the witnesses against them,* and to cross-examine their accusers. We cannot believe that Congress intended to deny these fundamental rights to anyone, and because of such belief it is our opinion that these Rules of the Commission are ultra vires and unenforceable. Therefore, plaintiffs are entitled to immediate relief against them.

187 Third, entirely aside from the statutory questions just discussed, the Courts of the United States, and their Anglo-Saxon predecessors, always have seen to it that, in hearings or trials of all kinds, persons accused of violating laws must be adequately advised of the charges against them, confronted by their accusers, and permitted to search for the truth through thorough cross-examination. In Jones v. Securities Commission, 298 U.S. 1, 27, 57 S. Ct. 654, 80 L. Ed. 1015, the Supreme Court said:

"* * * 'A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end.'

"The fear that some malefactor may go unwhipped of justice weighs as nothing against this just and strong condemnation of a practice so odious. * * *

"The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. *An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by*

* 42 U.S.C.A. § 1975a (g) indefinitely authorizes the Commission to sit in executive or closed session. Apparently pursuant to this, the Commission's Rules 2 (c) and (g) were adopted. They do not guarantee, or apparently even permit, the person accused at such an executive session to be present to confront the witness or witnesses against him.

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what it actually succeeds in bringing, to light. * * *" (Emphasis supplied.)*

In Morgan, et al v. United States, et al, 304 U.S. 1, 14, 20, 25, 58, S. Ct. 773, 82 L. Ed. 1129, involving an administrative hearing, the Court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by
183 adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing,'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.' * * *

* * * * *

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. * * *

* * * * *

"Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. * * *"

In the most recent decision on this subject, handed down by the Supreme Court on June 29, 1959, Greene v. McElroy, No. 180, October 1958 Term, —— U.S. ——, —— S. Ct. ——, —— L. Ed. ——, 27 L.W. 4528, 4534, 4539, and speaking through Chief Justice Warren, the following language is found:

"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the indi-

vidual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or partisanship. We have formulated these protections in the requirements of confrontation and cross-examination. They have ancient
360 roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., Mattox *v.* United States, 156 U.S. 237, 242-244; Kirby *v.* United States, 174 U.S. 47; Motes *v.* United States, 178 U.S. 458, 474; In re Oliver, 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., Southern R. Co. *v.* Virginia, 290 U.S. 190; Ohio Bell Telephone Co. *v.* Commission, 301 U.S. 292; Morgan *v.* United States, 304 U.S. 1, 18; Carter *v.* Kubler, 320 U.S. 243; Reilly *v.* Pinkus, 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. Joint Anti-Fascist Committee *v.* McGrath, 341 U.S. 123, 169-170 (concurring opinion).

"Professor Wigmore, commenting on the importance of cross-examination, states in his treatise, 5 Wigmore on Evidence (3d ed. 1940) § 1367:

" 'For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sifted by that test, has found general strength in lengthening experience.'

* * * * *

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., The Japanese Immigrant Case, 189 U.S. 86, 101; Ng Fung Ho *v.* White,

vel non can be determined by the three-judge court after hearing on plaintiffs' application for an interlocutory injunction. See Ohio Oil Co. v. Conway, 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972, where the Supreme Court stated, in a per curiam opinion:

"The application for an interlocutory injunction was submitted on ex parte affidavits which are harmonious in some particulars and contradictory in other. The affidavits, especially those for the defendant, are open to the criticism that on some points mere conclusions are given instead of primary facts. But enough appears to make it plain that there is a real dispute over material questions of fact which can not be satisfactorily resolved upon the present affidavits and yet must be resolved before the constitutional validity of the amendatory statute can be determined.

* * * * *

"Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. Love v. Atchison, Topeka & Santa Fe R. Co., 185 Fed. 321, 331–332."

In Crockett v. Hortman, 101 F. Supp. 111, 115, at page 115, Judge Wright, of the Eastern District of Louisiana, dealing with the constitutionality of a State statute, said:

"Where as here the questions presented by an application for a temporary injunction are grave, and the injury to the moving parties will be certain and irreparable if the application be denied and the final decree be in their favor, while if the injunction be granted the injury to opposing parties, even if the final decree be in their favor, will be inconsiderable, the injunction should be granted. Ohio Oil Co. v. Conway, 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972.

192 "The determination of the grave constitutional issues presented in this case should not be decided without a trial on the merits, Polk Co. v. Glover, 305 U.S. 5, 59 S. Ct. 15, 83 L. Ed. 6, and a temporary injunction should be issued in order that the status quo may be preserved until that time."

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To the same effect, see also Burton, et al. v. Matanuska Valley Lines, Inc., 244 F. 2d 647.

This, then, is another ground upon which plaintiffs are entitled to the immediate relief they seek.

For these reasons,[21] the applications for temporary restraining orders will be granted.

Thus done and signed, in Chambers, at Shreveport, Louisiana, on this the 12th day of July, 1959.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.

193 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Temporary restraining order

July 12, 1959

[File endorsement omitted.]

Upon the verified complaint heretofore filed herein, and upon motion by complainants for a preliminary injunction and for a temporary restraining order against defendants, it appearing to this Court that the complaint seeks a judgment and enjoining the defendants, John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan; Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas; John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana; Doyle E. Carlton, whom complainants allege to be a

[21] Nothing that we have said, in ruling upon these cases, is intended in any way to reflect upon the Commission, its members or its staff, all of whom, we are sure, are honorable gentlemen.

resident of Tampa, Florida; George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C., individually and in their capacity as members of the Commission on Civil Rights created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., their agents, servants, em-
194 ployees and attorneys from enforcing, attempting to enforce, proceeding under, or holding any hearings pursuant to Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., and the rules of procedure promulgated pursuant thereto as concerns complainants herein and others similarly situated upon the ground, among others, that the aforesaid statute is unconstitutional, this Court finds that irreparable damage will be caused to complainants unless a temporary restraining order is issued against the said defendants, and all of them, for the reasons stated in a written ruling this day filed, and made part hereof by reference.

Now, therefore it is ordered, adjudged and decreed that the said, John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan; Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas; John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana; Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida; George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D.C., individually and in their capacity as members of the Commission on Civil Rights, created by Public Law 85–315, 85th Congress, 71 Stat. 634; U.S.C.A. 42: 1975 et seq., together with their agents, servants, employees and attorneys, be restrained temporarily and enjoined from proceeding under or holding any hearings pursuant to said Public Law, as concerns complainants herein and others
195 similarly situated, and particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, Louisiana, until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three judges, to be held, as hereinafter ordered, on July 22, 1959.

It is further ordered that a rule nisi issue herein, directed to said parties hereby restrained, commanding them to show

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cause, if any they can, at 9:30 a.m. July 22, 1959, at the Federal courtroom, 3rd floor, United States Post Office and Courthouse, Shreveport, Louisiana, why the preliminary or interlocutory injunction prayed for by plaintiffs, should not be granted.

Issued at Shreveport, Louisiana, at 5:12 o'clock p.m., this 12th day of July, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

197 In the United States District Court for the Western District of Louisiana, Shreveport Division

No. 7479 Civil

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7480 Civil

J. A. H. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

Transcript of proceedings

Filed July 13, 1959 and July 30, 1959

Proceedings had in the above-entitled matters before the Honorable Ben C. Dawkins, Jr., United States District Judge, at Shreveport Louisiana, July 13, 1959, at 11 o'clock a.m.

198 Appearances: Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol Baton Rouge, Louisiana. William M. Shaw, Assistant Attorney General, State of Louisiana, Homer, Louisiana. Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana. Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, Louisiana. M. E. Culligan, New Supreme Court Building, New Orleans, Louisiana. John E. Jackson, Jr.,

New Supreme Court Building, New Orleans, Louisiana. Thompson L. Clarke, St. Joseph, Louisiana. Edwin L. Blewer, Caddo Parish Courthouse, Shreveport, Louisiana. For Plaintiffs.

Berl I. Bernhard, Attorney for Commission on Civil Rights.
Ben Brooks, Department of Justice, Washington, D.C.
199 D. Robert Owen, Department of Justice, Washington, D.C. T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana. Charles E. Clark, Legal Assistant to Robert G. Storey. For defendants.

Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

Colloquy

The COURT. Last night, at about 6 o'clock, after the Court had gone to its home, we received a telephone call from Mr. Bernhard, representing the Civil Rights' Commission, inquiring as to the possibility of the Court's requiring plaintiffs in this case to file a bond as security against possible damage and expense which may, or might, have been incurred by the Civil Rights' Commission in connection with the restraining order.

We told Mr. Bernhard that no one had called this matter to the Court's attention, and in the press and under the duress of the time element necessarily involved in the Court's actions, that we had not given serious consideration to this matter.

200 We will be glad now to hear from you, Mr. Bernhard, or anyone else representing the Commission, on your verbal motion that security be posted by the plaintiffs.

All right, sir.

Mr. BERNHARD. May it please the Court, I am entering a limited appearance to the same extent that I entered in the proceeding the other day.

As the Court is well aware, we received notification of the Attorney General and other parties to restrain our hearing, approximately 72 hours before the hearing, and as the Court well knows, we received notification of the restraining order about 5 o'clock yesterday afternoon.

We are asking, under Rule 65, for relief.

The Commission, upon consideration of its responsibility, and its relationship to the Attorney General, has asked that the

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Attorney General come into this case to represent the Commission.

A telegram went out to the Attorney General last night, and this morning the Attorney General has indicated acceptance of this case. From this point on, no member of the Commission on Civil Rights will represent the Commission in any
201 legal proceedings, and at this point, I would like to turn over to the United States Attorney for this District the motion we wish to make.

The COURT. Let me ask this question before you sit down: the Court received, a few minutes ago, a short memorandum brief on behalf of the plaintiffs.

Have you received a copy of that?

Mr. BERNHARD. Yes, sir.

The COURT. Have you had occasion to read the Toreau case?

Mr. BERNHARD. No, sir.

The COURT. Would you like to do so? I have it here on the desk.

Mr. BERNHARD. I would like to do that.

Let me say this: Although I have not read that particular case, we have researched the point and believe, on the law, as well as the facts, we are entitled to the relief we request.

The COURT. Would you like to see that case, Mr. Wilson, before you speak?

Mr. WILSON. Yes, Your Honor.

The COURT. I might say, from our hasty reading of that section of the decision which is marked in pencil, it appears to us, the Fifth Circuit Court of Appeals held that the question of whether the bond should be required is one addressing
202 itself to the sound discretion of the Court rather than being a mandatory request under Rule 65(c), as Mr. Bernhard indicated last night.

Mr. BERNHARD. We are in complete accord, regardless of the mandatory language of Rule 65(c), and we do not wish to contest that point at all.

The COURT. All right, sir.

Mr. WILSON. May it please the Court, I, as United States Attorney, have been requested by the Attorney General of the United States to represent the Civil Rights' Commission, and

also the Department of Justice, whose representatives are here, Mr. Ben Brooks of the Civil Rights' Division of the Department of Justice, and Mr. Owen, and we would like to ask the Court to modify the restraining order to the extent of requiring bond from the plaintiffs, in the amount of $10,000, and in support of that, while the Government agrees it is discretionary with the Court as to whether or not the bond should be required and the amount thereof, still we have a case here which we have not had an opportunity to read, as yet. It is merely a citation and annotation, which is the case of Benz, et al. vs. Compania Naviera Hidalgo, S.A., 205 F. 2d, 944, cert. denied; 74 Supreme Ct. 135, 346 U.S. 885, which says, in the absence of bond——

The COURT. What circuit decided that?

Mr. WILSON. I am unable to tell from this annotation.

203 The COURT. I will check it at the proper time.

Mr. WILSON. In the absence of bond, or security, there may be no recovery of damages for issuance of temporary injunction, even though it may have been granted without just cause.

The COURT. In other words, do I understand you to say the Commission, or the United States, itself, would have no right under that decision to sue these plaintiffs in damages if ultimately this court's decision granting a restraining order is set aside?

Mr. WILSON. That is correct, Your Honor.

That is the position the Government takes at this time.

The COURT. What is the authority for that position?

Mr. WILSON. That case.

The COURT. What authority does the case cite?

Mr. WILSON. I haven't had a chance to read it. I just picked this up now.

We are prepared to offer testimony at this time, if the Court would like to hear it, as to the out-of-pocket expenses of the Commission, in preparation of this hearing.

204 The COURT. Let me ask the attorneys for the plaintiffs if they have any objection.

Mr. GREMILLION. In other words, if the Court wishes to hear that testimony, we certainly have no objection to that, but I would like to say this: the temporary restraining order issued by the Court certainly doesn't stop the Commission

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from having an executive session in Shreveport. It doesn't stop it from discussing any matters they wish to discuss. It only enjoins them from hearing complaints concerning these particular complainants, and other than that there is absolutely no reason why the Commission, which I understand is at Barksdale Field right now—there is no reason why they cannot have a meeting at the present time. They are entitled, under the law, to their per diem and their particular expenses. They could leave here and go to New Orleans and hold a meeting. They are in Bossier Parish right now. They could come here and hold a meeting.

The COURT. Let me inquire of Mr. Wilson. He may be able to answer this: without knowing, I surmise that the entire subject matter of the hearing which was proposed for today in this Courtroom by the Commission dealt exclusively with complaints against the plaintiffs in this action.

Mr. BERNHARD. That is the understanding that, I, too. had.

205 We had understood from the wording of your order that we were restrained from holding a hearing. In view of that, we did not feel we could put ourselves in the jeopardy of assuming we could interpret the opinion of this Court to go back to our own rules and say it would allow us to have an executive session.

We didn't think, since the executive session point was argued, that we had any right to go ahead with the hearing today.

The COURT. It is your understanding that the subject matter of the proposed hearing was to be exclusively concerning complaints made against these plaintiffs?

Mr. BERNHARD. That is correct.

Mr. GREMILLION. This is the first official informal notice that we have ever had, because under the rules served upon the complainants, there is one little section which says that the purpose of the hearing will be announced by the chairman when the Commission convenes.

The COURT. That is correct. I believe that is required by the Statute creating the Commission.

Mr. GREMILLION. For that matter, the Commission certainly could have still met here this morning and discussed, maybe, discrimination in housing problems.

As far as the executive session being intolerable, I cer-
206 tainly agree with that and I still subscribe to that theory. But, the Commission is still clothed with that authority, and I am informed several of them are still at Barksdale Field and they may be having an executive session, right now, but we don't care as long as they are not discussing these particular complaints against registrars.

The COURT. I think we better hear from Mr. Shaw.

Mr. SHAW. I have objection to the testimony as outlined by the United States Attorney.

Your Honor will recall that both of these suits—and I am primarily interested in No. 7480—both suits are against six individuals, in their individual capacity, and as members of the Commission, but only against those individuals. This is not a suit against the United States. Were it so, we would have to proceed differently. It is not a suit against the Civil Rights' Commission as an entity.

As a matter of fact, a suit of that type cannot be brought against a Federal agency. The injunction enjoins those individuals, and their agents. It does not enjoin the United States. It does not enjoin other parties. The bond should be for the protection of those individuals. Showing what costs
the United States might be out, is not relevant, in my
207 opinion, to a bond to protect individuals against losses which they might sustain. I think the bond should go no further than to protect what the six individuals themselves might sustain—what losses those individuals might sustain, or their agents would sustain, as individuals, by virtue of this particular injunction.

I repeat, again, in these civil rights' cases, Your Honor found the Toureau case and the Ludley case, and both cases have gone out of their way to hold these bonds are not necessary. They have never given a bond, even though it involved the possible shutting down of the entire school system in one of the largest places in the South, such as, New Orleans.

I think the Court has taken an extremely liberal viewpoint in not imposing an excessive bond.

Mr. WILSON. The suit is against the individuals as members of the Civil Rights' Commission. This is not an expense of the United States Government, but of the Commission itself.

The COURT. Would not the Government ultimately pay the bill?

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Mr. WILSON. Yes. All the people of the United States will ultimately pay the bill.

The COURT. Are not the travel expenses of the Commission itself paid out of appropriations made by
208 Congress?

Mr. WILSON. Yes, Your Honor.

The COURT. Subject to Mr. Shaw's objection, we will hear the testimony we have as to the expenses.

Mr. GREMILLION. We would like it understood that there may be certain objections made to the testimony as it comes up.

The COURT. Oh, yes. It will be an adversary proceeding, Mr. Gremillion, and you will be entitled to cross-examine all witnesses.

Mr. BERNHARD. Preliminarily, if the Court please, I would like to answer these gentlemen.

First, the point the Attorney General made that this Commission is down here and they could do other things, are not specious. The Commission has been preparing for this hearing for a considerable period of time. They came down, and they were down here before they had an opportunity to prepare for anything else. You do not set up a discussion of housing, or education, on the spur of the moment.

For all intent and purposes they are down here and find there is nothing they are capable of doing.

As far as the objection by Mr. Shaw, it may be some
209 of the Commissions are named in an individual capacity, and to that extent they are responsible for accounting a fiduciary relationship to the Commission. They are, also, in that representative capacity, regardless of how they may be represented. They are not completely individuals. I think it is important to point that out.

The COURT. Of course, if they were simply individuals and no more, they wouldn't be here.

Mr. BERNHARD. That is perfectly correct.

May I have a moment, if the Court please?

The COURT. Yes.

Mr. BERNHARD. If the Court please, I have, in the short period of time allowed, discussed this matter with Mrs. Carol Arth, who is present in the room today. She is the executive secretary of the Commission on Civil Rights and responsible for all budget matters. We have gone over our reports and

picked out the expenses which could not be recovered if it should follow that the Court's ruling of yesterday should be set aside.

By agreement with the United States Attorney, I would like to read into the record what these expenses are.

If it is the desire of the Court to have me take the stand to do so, I will be happy to do so.

Mr. GREMILLION. We object. We would like to have
210 him take the stand and testify.

The COURT. All right.

BERL I. BERNHARD, called as a witness on behalf of the Civil Rights' Commission, being first duly sworn by the Clerk, testified as follows:

Mr. GREMILLION. At this time, we will ask that any witnesses they intend to use with reference to financial expenditures, we ask for the severance of those witnesses.

The COURT. Do you have any other witnesses you propose to call besides yourself?

Mr. BERNHARD. It may be necessary, if the Court so desires, to call Mrs. Carol Arth.

The COURT. We better have Mrs. Arth placed under the rule and have her retire to the witness room.

(Whereupon, at this point, Mrs. Carol Arth was sworn by the Clerk.)

The COURT. Mrs. Arth, do not discuss the case before the Court with anyone else except your attorneys until this hearing is through.

Is that clear?

Mrs. ARTH. Yes, sir.

(Whereupon, at this point, Mrs. Carol Arth left the Courtroom.)

211 Mr. BERNHARD. May I give my testimony in narrative fashion?

The COURT. Do you object?

Mr. GREMILLION. We will see what happens when he starts.

Direct examination by Mr. WILSON:

Q. Mr. Bernhard, will you relate to the Court the expenses of the Commission with reference to the preparation of this hearing?

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Mr. GREMILLION. If the Court please, it is obvious from the remarks made by this witness, that his testimony will be hearsay.

The COURT. Do you know whether this is hearsay, or not? You are an attorney. Do you have personal knowledge as to the matters you will testify about, or is it something Mrs. Arth, or someone, has told you?

The WITNESS. I have sat down with Mrs. Arth and gone over firsthand the records we have kept.

I should also say we have gone over the records in the office under the supervision of Colonel Rosenfeld. I don't believe it would be hearsay, unless, under those circumstances——

The COURT. Do you have the original records?

212 The WITNESS. No; I do not.

The COURT. Where are they?

The WITNESS. They could be found at Barksdale.

The COURT. Wouldn't they be the best evidence?

The WITNESS. They are in great detail and they might be the best evidence. I intended to explain to the Court what the sum totals were, and it was my feeling, unless the Court were to feel otherwise, these could stand on themselves, and I would assume, I would be testifying as an attorney, and I certainly could assure the Court these are correct, and I will give my attorney's oath in that respect.

The COURT. Gentlemen, at that point, I think it is necessary for the Court, like we say in the vernacular, to lay down some ground rules for this hearing.

This is a matter being tried by the Court without a jury. It is a matter, which both sides concede, is addressed to the sound discretion of the Court.

We have no reason whatever to question the truthfulness of what Mr. Bernhard will testify to.

For that reason, I am going to permit him to proceed, even though the best evidence is as just stated, out of deference and courtesy to him.

Proceed.

213 The WITNESS. I appreciate it, Your Honor.

The following are a list of expenses, giving the dates that they were incurred by the Commission during its investigative stage in preparation for this hearing.

The figures themselves have been rounded off, so that if the figures, for example, were $351, we might put down $350. That is the way it stands.

From February 27, to March 2, two investigators of the Commission on Civil Rights were in Louisiana for preparation on an investigative capacity for this Commission, and their total expenses were $350.

The COURT. I don't believe that would be a relevant item. Any investigation made by the Commission in advance of the proposed hearing would be expenses which certainly should be absorbed by the Commission, and I don't believe these plaintiffs would be liable for that, under any circumstances.

The WITNESS. If the Court please, the investigators were sent down exclusively and solely to determine what certain allegations were that were received by the Commission.

Under the Statute, we are required to show we have received certain complaints. It is anticipated under the Act,
214 that upon receiving these complaints and investigating them, we shall hold a hearing.

It would be my feeling all of these investigators' expenses were expenses incurred directly in connection with holding a hearing.

The COURT. Those expenses would have been incurred, in the opinion of the Court, whether or not the hearing was to be held.

We rule now that those would not be considered by the Court.

The WITNESS. I will strike out from the list, all the investigations which were made preliminary to the Commission setting a hearing.

May I ask Mr. Clark the date, so I don't have to go through all this myself—the date the Commission finally set the hearing?

Mr. CLARK. June 10.

The WITNESS. I will leave out all expenses preliminary to June 10.

From June 30 to July 3, one of the members of the Commission was engaged in the service of the Commission.

Mr. GREMILLION. Which one? If Your Honor please, I think we ought to know who that member was?

The COURT. I think you are entitled to know that. Tell him who it was.

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215 The WITNESS. Mr. Norman Simpson, an investigator on the Investigative Staff.

Mr. GREMILLION. If Your Honor please, I understood the Court's ruling a moment ago that we were going to be concerned with the alleged expenses of the defendants in this matter. Mr. Simpson is not a defendant. I don't know who he is.

The COURT. He is speaking of expenses incurred by the Commission, as such.

Mr. GREMILLION. Pardon me.

The WITNESS. June 30 to July 3, $350.

The COURT. That was serving subpoenas?

The WITNESS. That is correct.

Two investigators, and I will name them, Mr. Anthony Mondello and Burton Goodyear, from June 22 to June 30, were interviewing witnesses in preparation for the hearing, and their total expense was $700.

Between June 20 to June 26, Mr. Ward Binell and Mr. Ray Miller were interviewing witnesses, and their total expense was $450.

From June 16 to June 23, Mr. Norman Simpson and Mr. Downs, were conducting investigations, or interviewing witnesses, and their total expenses were $550.

216 From June 18 to June 28, Mr. Ward Binell and Mr. Miller, were performing the same functions, interviewing witnesses, in preparation for the hearing, and their total expenses were $800.

On June 22 through June 25, Mrs. Carol Arth was making preparations for the accommodation for the Commission itself and for the use of the Courtroom and her total expenses were $400.

I might add, in explanation of what these expenses include. They include the air transportation, round trip, the per diem, which is $12 a day for all government employees, the expenses of either renting cars or using taxis, and telephone calls, which were made in line of official duty.

The total telephone calls which were made in the line of official duty—I would have to break this down in view of the ruling of the Court—were over $300.

In further specific preparation, we subpoenaed 17 registrars and one former registrar, as well as 40 witnesses who are not state officials.

The mileage for all these subpoenas, which is required to be paid under the Act, amounts to $1,340.

Mr. SHAW. We would like the names of each one of those subpoenaed.

217 Mr. GREMILLION. Mr. Shaw, we will cross-examine him.

Mr. SHAW. I understood the Court instructed him to itemize them.

The COURT. I know what you are driving at.

I will take his word for that.

The WITNESS. The minimum per diem for the witnesses attending is $250. That requires an explanation as to whether or not this should be included—it will depend on how many of the witnesses appear, and we will have to determine this later in view of the fact that some of the witnesses may come here without notification by the Commission of the restraining order.

The United States Marshal's fees for serving the subpoenas amounted to $125.

An advance party of six members of the Commission arrived on July 5 and have been here ever since. Including their salaries, the cost of transportation——

The COURT. Staff members?

The WITNESS. Yes.

The use of rental cars, the total cost is $1,920.

Dean Robert Storey, a Commissioner, as a result of
218 the recent litigation which has been started, was required to make two trips to Dallas during this week, and at $50 per day, plus the per diem and his cost of transportation, it amounts to slightly over $200. We put down $200.

There are now, at Barksdale Air Force Base, six commissioners. Their total travel expenses amount to over $500, plus $50 a day which they receive, and $12 per diem——

The COURT. What does that total?

The WITNESS. That totals $1,100.

I would like to mention another item, and this would be subject to the Court's ruling.

It is relevant to the holding of this hearing.

At recent conferences held by the Staff Director, Mr. Gordon Tiffany, with the Attorney General and Governor of Louisiana——

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Mr. GREMILLION. Mr. Tiffany came as my guest. He was wined and dined and it was paid for by the Attorney General of Louisiana, except his hotel room and his transportation.

The COURT. Did Mr. Tiffany charge per diem for that, too?

The WITNESS. I couldn't tell you that. Those are the basic expenses.

219 In view of the Court's ruling, whereas I had initially calculated that the expenses which we do not believe could be recovered, if we were to hold another hearing, and we have to make these expenditures again, amounted to $12,256.

If the Court will give me a minute, I can strike out the items in accordance with your ruling and tell you what the present sum amounts to.

The COURT. It strikes me, offhand, that any expenses incurred in investigation, or interviewing witnesses, and matters of that kind, properly could not be assessed as costs, any more than could attorneys' fees, and that sort of thing.

The only thing I am giving any serious consideration to, out of this list you have, is such things, for example, as their coming here for these past few days, the Commission members and Staff members; the necessary mileage and per diem of witnesses who were summoned and who appeared—that is, who actually appeared here today and did not learn of the restraining order in time for you to stop them from coming.

The WITNESS. May I say one thing?

The COURT. Yes, sir.

The WITNESS. We feel, certainly, that since the Com-
220 mission set down a hearing on June 10, they had a choice of whether or not to have one on the basis of the recommendations of investigators and the staff. Had they decided not to have one, no expenses would have been incurred by the investigators and the staff and legal staff, and we feel very strongly that all of these expenses are directly connected with this hearing and they represent out-of-pocket costs of the Commission itself.

The COURT. I see your point, but I don't necessarily agree with you.

The WITNESS. I can't force that.

Those are the total expenses we have, and those are the ones we feel we cannot recover, and if we were to be sustained in our suit, which is now in the hands of the Attorney General, we would expect these expenses would have to be undergone again

by the Commission, and therefore, they represent out-of-pocket loss to the Commission right now.

The COURT. Do you wish to cross-examine Mr. Bernhard?

Mr. GREMILLION. Yes. Mr. Lassiter will conduct the cross-examination.

Mr. SHAW. May it please the Court, there are two cases involved here. I may want to cross-examine.

The COURT. All right.

221 Cross-examination by Mr. LASSITER:

Q. Mr. Bernhard, if I understand your testimony correctly, you had personally checked the itemized accounts of the various investigators, and so forth, in compliance with this statement?

A. I will explain in detail what happened:

We have been required, in the interest of proper budgeting, to submit at the end of every day a list of all people doing work for the Louisiana hearing.

I have submitted one for the law section.

Colonel Rosenfeld submitted for the investigators, and overall supervision and co-ordination has been with Mrs. Carol Arth.

I have gone over, this morning, the copies of the reports I submitted, and that of Colonel Rosenfeld and we discussed both of them.

Q. Then, you have examined these reports which were made—daily or weekly reports that were made?

A. That is correct.

Q. For example, this business of $350 to Norman Simpson from June 30 to July 3——

A. Right.

Q. Did you have a report to substantiate that expense?

222 A. The report I had on that was, and I will tell you what it included, and I am giving you the best of my recollection.

It was $141 for round trip air expense. The per diem is $12 a day. The cost of using a rental car, and the cost of Mr. Simpson's salary while he was down here.

Q. You include in that $350 his salary. He is on an annual basis?

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A. That is correct, and we did that on the principle that he would have been doing other things had he not been down here in preparation for this hearing.

Q. Then, that same principle applies to all of these other people, the same as these investigators?

A. Perfectly true.

Q. Mr. Bernhard, in looking at these reports, about which you have testified, do they outline the names and addresses of the witnesses that they interviewed?

A. Some of them do and some of them don't. None of mine, for example, do. Some of Colonel Rosenfeld's do, because he is in charge of the section of complaints, information and survey. His do show that.

Q. Do you recall approximately how many witnesses, we will say, that Norman Simpson interviewed during that period of time?

A. I do not. I could not give you that information.

223 Q. I believe you testified you subpoenaed 40 witnesses to come to this hearing?

A. That is correct. Let me break that down to be a little more specific:

Thirty-four of those witnesses were ones that would fall in the category of those who submitted complaints to the Commission. Six were private individuals in the state who had not submitted such complaints.

Q. Your records do disclose the names and addresses of those 40 witnesses?

A. Yes, they do.

Q. Your accounting records, we are talking about?

A. I can't tell you they have all of them down there. They might have the ones they interviewed and decided they didn't present a bona fide case. They might have some of the ones we have subpoenaed. I couldn't tell you precisely.

Q. Can you tell us how many of those interviewed by these various investigators, as corresponds to the number that you subpoenaed, were not going to be used in this Commission hearing?

A. I must tell you that it is beyond my competency.

I have been mostly responsible for the legal preparation.

I do know there were more people interviewed than we subpoenaed.

224 I should also say the limitations on the subpoenas were in the interest of time because we were only permitted to have use of the Courtroom for one day.

The COURT. For the record, let this be said: the Court arranged to lend the use of this Courtroom to the Commission for July 13, intending to place no restrictions upon the Commission as to the length of the hearing.

When we first learned of the date of the hearing, we contacted Dean Storey and explained to him we had an important case fixed for trial tomorrow, July 14, that had been fixed for two or three months and involved multiple millions of dollars and with about fifteen attorneys involved. For that reason, the Courtroom could not be available from the 14th through the balance of the week, but any other time, it would have been completely available.

The WITNESS. I didn't mean to draw any derogatory implications by saying that.

I meant to indicate we had a limitation which I thought should be stated.

By Mr. LASSITER:

Q. Mr. Bernhard, in that connection, you testified you subpoenaed 40 witnesses through the Commission's own efforts and 24 through the marshal's office. That is a total of 64.

A. No, I don't think I said that. I said we sub-
225 poenaed 17 through the United States Marshal's office.

The COURT. Probably, the 17 registrars, plus the plaintiffs.

The WITNESS. I think that is correct.

I am not an expert regarding the handling of subpoenas, and I don't hold myself out as such.

By Mr. LASSITER:

Q. I understand. That is about 60 witnesses, in addition to the records you subpoenaed from the registrars' offices.

Do you believe that the Commission conscientiously expected to hold this hearing for one day only?

A. That would be hard to say. Let me tell you this: I have not put this in the expenditure list. It didn't occur to me at the time.

There are, down here at the present time, six members of the Legal Staff who were coming down for a number of purposes, but one of the specific purposes was to be available if

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we needed help on the records, which we were anticipating would be brought in at 9 o'clock in the morning.

The COURT. As a matter of fact, weren't you anticipating, and didn't you advise the Court, you fully expected the registrars to refuse to bring in the records subpoenaed by the Commission and, therefore, under the Statute, you would
226 have to apply to the Court for an enforcement order?

The WITNESS. I don't know if I made that response. We could not afford to take the chance of having the records come in and not having the personnel available.

The COURT. You couldn't expect the registrars, under the State law, to subject themselves to criminal penalties by bringing those in on the subpoena of the Commission, rather than an order of the Court?

The WITNESS. I think that is perfectly fair. Let me say this——

The COURT. I don't mean to interrupt you. What I am getting at is this: if the Commission felt it was absolutely necessary to their investigation to see these registrars' records, necessarily, they must have anticipated getting those records—not, today, July 13, but upon an order of the Court to be obtained at some later date after the registrars refused to produce them, which would mean that either there would have to be another hearing, or that the records would have to be made open to investigators to photograph copies, as Judge Johnson did in the Wallace case.

The WITNESS. What I anticipated and discussed with Mr. Clark, we thought there was a possibility of reaching an agreement where, if necessary, we could look at the records wherever they were located, and we felt it was necessary to be prepared for that contingency.

227 By Mr. LASSITER:

Q. Do I understand your testimony correctly, Mr. Bernhard, that you have brought in here six men, who are not members of the Commission, with the anticipation of those men examining the records of the registrars of voters?

A. No, they are members of the Commission. They are legal assistants to the Commissioners.

Q. They are Staff Members, but not members of the Commission appointed by the President of the United States?

A. Perfectly true.

Q. Do you have available the records of the names and addresses of the witnesses which each of these investigators talked to and obtained affidavits?

A. I don't have a list of them with me; no.

Q. You are a representative of the Commission. Does the Commission have?

A. I presume that someone does have the record of who we saw. I don't know that it is down in any list of who we saw.

The COURT. Mr. Lassiter, I understand what you are driving at, and I can't blame you for trying, but I don't believe that line of questioning is germane of costs.

Mr. LASSITER. It may be in this respect—let me ask one more question.

228 By Mr. LASSITER:

Q. You have stated that you subpoenaed 40 witnesses through the Commission, and more than that number were questioned by these investigators and were not subpoenaed?

A. That is a fair statement.

Q. Can you tell the Court definitely, with respect to that 40, how many others were—what is the number?

A. The total number?

Q. Yes. Was it 100, 200?

A. If I said it, I would be guessing. I really don't know.

The COURT. Can you give us a fair estimate?

The WITNESS. I couldn't give you a fair one.

By Mr. LASSITER:

Q. Do you have any objection to furnishing this Court with the correct number, or a list of addresses of all these witnesses?

A. No; I wouldn't.

Mr. WILSON. May it please the Court, we would like to object to that last question.

The COURT. I am going to cut this part of Mr. Lassiter's cross-examination short, with this observation: this Court would not take into account, if it fixes a bond, any investigative expenses. We do not believe that properly could be considered.

229 Your objection is sustained.

By Mr. LASSITER:

Q. Mr. Bernhard, assuming that for some reason unknown that this Commission had come here and this suit had not been

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tried and the Commission decided not to hold the hearing, who would have had to pay the expenses?

The COURT. That is self-evident.

Mr. LASSITER. Thank you.

The COURT. Mr. Shaw, do you care to cross-examine?

Mr. SHAW. Yes, sir.

Cross-examination by Mr. SHAW:

Q. Mr. Bernhard, I believe you stated you anticipated that you might have the subpoenas—the subpoenas might not be honored and you might have to obtain an order from the Court to require the attendance and so forth, of witnesses; is that correct?

A. You are using the word "anticipate". We considered that possibility. We didn't conclude that it wouldn't necessarily happen.

Q. You had even spoken to the Court about the possibility of it happening?

A. When we were stating our legal position, we said
230 we recognized what the problem was.

The COURT. Let me remind you of the occasion that I referred to in my question a minute ago.

You and Mr. Mottolese had been working in the library, and I told you what I anticipated the attack to be upon the Commissions' action.

I also said, "Do you expect the registrars to produce their records without an order of the Court?" And, I believe, both you and Mr. Mottolese said, "Of course not." Or words to that effect.

The WITNESS. I am quite sure I would not have said "of course not."

I think I said, "I think it might happen."

By Mr. SHAW:

Q. Regardless of the technical words, what would the Commission have done, had that situation arisen?

As I understand it, you arranged for a one day hearing. You couldn't have had it under those circumstances?

A. We would have gone ahead the same way we did in Alabama and put on our witnesses and asked the registrars to testify with the absence of their records, and if the Commission

decided it was contempt of their hearing, to turn the case over to the Attorney General to get a court order.

We would have gone ahead the same way we did in
231 Alabama.

Q. As I understood it, you were anticipating the possibility that, not only the records might not be here, but the registrars themselves would not be here?

A. No; that is not true.

Q. You hadn't considered that as a possibility?

A. We didn't feel we could determine whether they would or wouldn't.

We figured, since it was a Federal subpoena, we anticipated they might testify but they might or might not bring their records.

Q. That would have occasioned a delay in your hearing?

A. Not in putting on all the witnesses who responded to the subpoenas.

The COURT. What he means, it might or might not have occasioned a delay, depending on the Commissions' decision with respect to the records.

By Mr. SHAW:

Q. You are asking for the total expense of everything incurred in this hearing.

Would that have meant not only in case this hearing were not held, or merely a delay for another day?

A. It would have meant we would have gone on with everybody that was here.

Q. Let us say, if no one showed up?

232 A. If no one showed up, I presume we would not have a hearing.

Q. You would have gone in Court and turned it over to the United States Attorney to get an order to force it?

A. It would have been a determination by the Commission whether they felt it was advisable to do it.

If it was necessary, they would have notified the Attorney General.

Q. This hearing has been postponed, as a result of this action, to say the least.

Does that mean the hearing is over with permanently, or are you in a position to hold a hearing at a later date?

A. I can't speak for the Commission, Mr. Shaw.

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Q. If you are speaking for the Commission, and asking for these damages, whether or not they hold a hearing at a later date is material as to how much the damage is going to be?

A. We have already undergone the out-of-pocket expenses and they would have to be repeated if we held another hearing.

Q. You are just asking for out-of-pocket expenses for their being present today?

A. No. We are asking for the directly related expenses of the Commission in preparing for this particular hearing, and we have limited those expenses to those which we believe
233 would have to be undergone a second time when we hold a hearing.

Q. You mean to say, these expenses of interviewing the people would have to be undergone again at a second hearing?

A. As you know, Mr. Shaw, you may have an individual as a witness one day, and may not have him the next day, and the situations change. The voting situation changes.

The COURT. You mean he might change his story?

The WITNESS. No, I don't mean he might change his story, but he might fear, as this Court may know—some of these people told us, and I am relating it to a certain extent, that they have certain fears, whether they are economic, imaginary, or physical, and some of them may change their minds before the time of their testimony.

We have to consider those things before we subpoena people. As a result, we feel if there is another hearing, we would have to again go to the various parishes to determine whether or not those parishes present problems which should be brought to the hearing, or whatever the situation is.

By Mr. SHAW:

Q. Actually, the truth of this matter is that the effect of this order is nothing more than a continuance, if your
234 claim is correct?

A. It might be a continuance, but we would have to go through these same expenses a second time, if we have another hearing. We have the people available, and we have gone through the expenses, and we would have to do the same thing again.

Q. You may or may not do it; isn't that right? That is your opinion?

A. I could not tell you what might be done. We have been frustrated and thwarted in our effort to carry out a Congressional mandate.

Q. As a matter of fact, you are empowered to make studies, are you not?

A. That is perfectly true.

Q. And these expenses for your work down here, you have been doing a good deal of studying in connection with that?

A. Yes, and some of the studying we have done has been completely deleted from this, because we did not believe it would be an expense that would have to be done again, because it was not related to this hearing.

Q. How much of this money, which has been spent, was paid out directly by the six named individuals in these suits—paid out of their pocket?

The COURT. You mean un-reimbursed?

235 By Mr. SHAW:

Q. Either un-reimbursed, or expenses for which they will not be reimbursed?

A. All of the expenses, I presume, will come out of the Commission's budget, and I am quite sure some of the members of the Commission have not received any of their back payment owed to them by the Government, but they are not going to stand the expenses themselves.

The COURT. Let me ask you this legal question, Mr. Bernhard: if the Court were to order a bond posted, in whose favor would that bond run? Would it run in favor of the Commission, which itself is accountable to the Treasury, or would it run in favor of the individual members who are not directly accountable to the Treasury, but only the Commission?

The WITNESS. I was asked to ask for the indemnification of the Commission itself.

The COURT. Do you consider the Commission is a party to this proceeding?

The WITNESS. Yes.

By Mr. SHAW:

Q. You realize they are not a named defendant?

A. I understand that.

Q. Will you, or any other individual, as far as you know, either in his capacity as a member of this Commission,

236 expect any of these witnesses to refund any of this

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money they have been paid for expenses in connection with this hearing?

The COURT. You mean those that didn't come today?

Mr. SHAW. Yes.

The WITNESS. Those that did not come, we feel we should recover some of that money.

The COURT. Some, or all?

The WITNESS. All. The government is responsible for accounting for all of it.

By Mr. SHAW:

Q. Have you figured out what that is?

A. No, we have not been able to determine how many were here. Some arrived yesterday. Some arrived today. There are a number of registrars here. I don't know how much we will recover on that.

Q. Any witness who made the trip is entitled to his mileage. What about his per diem?

A. I don't think at this time, I could state exactly what would be done with the per diem. The Statute has a specific provision on it, to the effect that those who attended the hearing—and this may raise some question—we will have to consider whether or not there has been compliance with that statutory provision.

237 The COURT. What is the total annual budget of the Commission?

The WITNESS. I don't know. You better try Carol Arth on that.

By Mr. SHAW:

Q. Actually, none of the money that you have spoken of came out of the pockets of any of these named defendants; isn't that right?

A. I would say that was correct.

Q. None of it will come out of their pocket, regardless of the outcome of this particular hearing?

A. I would presume so, but there is a question as to whether in taking any action whatsoever may have been carrying out, or failing to carry out, their official responsibilities, and that is what concerned them about seeing to it that they were protecting their budget.

Q. I don't quite understand you?

A. To the extent that any commissioner fails to carry out certain of his responsibilities, he could be held liable, and one of the problems that concerns them is whether or not they could be held liable in failing to see to it that the budget of the Commission is protected.

Mr. SHAW. Thank you.

Mr. GREMILLION. Your Honor, I would like to ask a couple of questions.

238 The COURT. Very well.

Cross-examination by Mr. GREMILLION:

Q. Isn't it a fact the Attorney General of the United States instructed you to protect the expenses allegedly to be made by this Commission prior to your departure from Washington?

The COURT. I don't understand your question.

Mr. GREMILLION. My information is that the Attorney General of the United States is the person that told him to file this particular motion for a bond for alleged damages or losses, and not the Commission.

The COURT. Mr. Bernhard informed the Court on the telephone definitely that it was Dean Storey who raised that question.

The WITNESS. That is correct.

By Mr. GREMILLION:

Q. Did you have any conversation with the Attorney General of the United States about this motion?

A. I did not.

Q. Do you know of anybody else who had such a conversation?

A. I know of no one, and I can assure you, to the best of my knowledge, it was not done.

239 Q. Did Dean Storey instruct you to make this motion?

A. Yes, he did.

Q. Did the Commission instruct you to make this motion?

A. Yes; unanimously.

Q. When, unanimously?

A. Yesterday. Subsequent to the issuance of the restraining order.

Q. Where did those instruction take place?

A. I received those instructions on the telephone after communicating with Dean Storey.

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Q. Where was the Commission at that time?

A. I couldn't tell you.

Q. Dean Storey told you the Commission had instructed you; is that correct?

A. That is the best of my recollection.

Let me say this——

Q. Wait a minute.

In other words, the Commission had a meeting yesterday?

A. I cannot testify as to what the Commission did.

Q. You are an attorney, and you know if the Commission gave you instructions, they had to get together to give you such instructions?

A. They may, or may not have, Mr. Attorney General.

240 Q. I think the answer speaks for itself.

A. Dean Storey was designated, unanimously, by our Commission as the legal officer for this hearing.

I spoke with Dean Storey and I was informed this was the desire of the Commission—that last night it was determined at a full Commission meeting.

I cannot tell you who was there during the course of the afternoon. I got my instructions from Dean Storey.

Q. Let me ask you this: You did not have those instructions prior to last night?

A. Not the official instructions about what to do, although it had been discussed.

Q. You had your official instructions last night?

A. That's right.

Mr. GREMILLION. Thank you.

Re-cross examination by Mr. SHAW:

Q. You say Dean Storey was designated as legal officer for this particular hearing?

A. That's right.

Q. And he has been giving you instructions as to what to do in connection with this particular meeting we are concerned with?

A. That is correct. As of last night and this morning

241 when the full Commission was meeting, it was further discussed.

Q. In connection with the activities of Dean Storey, has he carried out his duties to the best of his ability?

A. He certainly has.

Q. Has the commission been derelict in any sense in protecting the budget of the Commission?

Mr. WILSON. We object to that.

Mr. SHAW. The Witness mentioned the possible liability of the Commissioners for being derelict in protecting the budget of this Commission.

If he knows of any such dereliction, I would like to know it.

Mr. WILSON. He is asking for a conclusion from the witness.

The WITNESS. I would like to answer this question in terms as to whether he carried out his legal responsibility pertaining to this hearing, and I have given you a direct answer. I hope I have given you a direct answer.

By Mr. SHAW:

Q. Has Dean Storey, or any member of the Commission, acted in such a way which might be construed as a failure to protect the monetary interests of the Commission?

A. I can't answer that.

Q. I said, "as far as you know"?

242 A. To the extent he is attempting to protect the Commission by getting a bond, it is my opinion, he is doing what is absolutely necessary.

Q. And the rest of the Commission, also?

A. I presume if he is doing it, the rest of the Commission is doing it by that means to attempt to protect the budget of this Commission.

Q. From the information you are giving this Court, there is no responsibility possible of any liability on their part as a result of failure to protect the monetary interests of this Commission; isn't that a correct statement?

A. I can't answer that. That is a conclusion this Court, or another Court, would have to make.

Q. To put it another way, you don't know of any act which would, in any way, cause them to incur any responsibility on their part?

A. If they do not protect the budget of the Committee, it could be construed to be such.

Q. You said you have acted to protect it?

A. That is the intention of my being here.

Q. The answer to that is they have not failed, in any action, to protect the monetary interests of the Commission.

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A. I would hope so, but I couldn't give you any assurance.

Mr. SHAW. That's all.

243 I would like to ask the Court to note that all the questions on cross-examination are subject to the objections previously made.

The COURT. All right.

Statement by Mr. Gremillion

Mr. Gremillion.

Mr. GREMILLION. I would like the Court to bear a few things in mind: I call the Court's attention to the pleadings and the fact that the Commission, several months prior to the Staff Members coming to Shreveport, they were advised of the Louisiana law and they were advised of the positions the registrars would take and namely, we wanted to know the names of our accusers and the nature of the complaints, and this State would cooperate.

We have done that on enumerable occasions. In addition to that, the Commission, by the passage of this resolution, pursuant to our request, refused to give this information. When the questionnaires were sent out, we wrote them a letter and advised them of the constitutional rights of these registrars. That letter contained complete reference to all the constitutional objections we made.

Despite that information, this Commission made administrative decisions, such as the one in Chicago, in June, when it decided to hold a hearing here. We were never officially notified of anything. All my office received was a letter saying that the Commission desired to hold a hearing

244 on July 13.

I point that out to the Court, that all these administrative decisions were made contrary and after being advised of the constitutional rights that these registrars would take.

So, therefore, these complainants should not be made to put up a bond to cover the results of expenses for the administrative decisions of the members of the Civil Rights' Commission, because if they had given us the names of the complainants and the nature of the complaints, there never would have been any necessity for a hearing in this case, and that, I think, is important, because they are seeking a bond to cover a possibility of a re-imbursement which was caused solely and

entirely by the administrative actions of the Commission, over which these complainants certainly have no control.

I call the Court's further attention to this: that the Commission is created primarily—solely for the purpose of finding fact concerning the discrimination of voters with reference to race, creed or color.

Their only authority is to file a report with Congress. Therefore, any of the results of investigators for this Commission which were made in Louisiana, can be filed in that report to Congress and can be fully utilized.

245 Also, where would there be any damage to the members of the Commission? Where would there be any loss? They still have the information.

Under their rules, if Your Honor will recall, and this is one of the things we raised in our pleadings under Section 8, I believe, that they are the sole judges of the facts pertaining to any testimony or evidence. Therefore, all of the investigations they have made, they can look at it, as a group, and say, "this isn't worth putting in the report to Congress", or they can assemble it regarding the Louisiana situation and make such a report to Congress.

Where would be the loss of the funds to the Commission?

I further call your attention to the fact that Dean Storey and Mr. Tiffany both said this was not an adversary proceeding. They said it was a fact-finding body.

The COURT. The Supreme Court of the United States said, in that connection, that it makes no difference if a person's character or reputation is going to be destroyed by refusal to permit cross-examination.

By Mr. GREMILLION:

I wanted to bring out and to show Your Honor in this instance that there is no necessity for a bond on the part of

246 these complainants, because the entire matter was provoked by administrative decisions of the Commission, and they can still use all evidence and testimony they received when they file their report to Congress.

The COURT. Do you want to be heard?

Statement by Mr. Bernhard

Mr. BERNHARD. Yes, sir.

What the Attorney General is now saying is while there is

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something wrong with having a full and open hearing and to say who the complainants are and the registrars are, that is not good, but it is perfectly satisfactory for us to make recommendations to Congress based upon reports and investigations. We have not seen the records and have not discussed them with the registrars in an informal way.

The COURT. Do your investigators, in interviewing people, require any complaints filed with the Commission be under oath?

Mr. BERNHARD. The complaints, themselves, are required to be notarized when we receive them.

The COURT. They are in affidavit form?

Mr. BERNHARD. They are in affidavit form.

In view of the statements of the Attorney General now, it seems to me we have every right to go ahead with our Congressional responsibility to investigate fully the situation, and after such examination, determine whether the facts
247 were substantial enough to be used for our report.

The COURT. This Court does not dispute that you have that right. We do dispute the question of denying the right to cross-examine.

It is the Court's view that you cannot have a fair hearing without permitting the witnesses' statements to be tested in the fairness of cross-examination.

Mr. BERNHARD. As the Court knows, it was not until yesterday evening that the Commission found out, and it was never anticipated that could be a result happening up until the day before.

We still feel we have every constitutional right to go ahead with the mandate we received from Congress.

The Attorney General's argument does not relate to the true acts. It was only last night that it was determined there was something wrong, in the mind of this Court, in going ahead with this hearing.

Certainly, up to the time of this hearing, we have done everything lawful and have gone ahead properly, and that is why the expenses were incurred, and I feel we should be indemnified.

Mr. SHAW. May I be heard, Your Honor?

The COURT. Yes.

Statement by Mr. Shaw

248 Mr. SHAW. We are concerned with the question of bond.

At the hearing Friday, and again today, Mr. Bernhard, Dean Storey, and the other people who appeared, made the claim they were not here representing the Commission. They reserved their rights. I tried specifically to get Dean Storey to state his capacity and he did specifically refuse to state whether or not he was representing the Commission.

Now, I understand, they want the Court to protect the Commission, but they don't represent the Commission, by their own statement, and by the statement Mr. Bernhard made, that he was here subject to the statements made last Friday.

A bond given in this case will not run to the United States. It will run to John Hanna and the other named individuals.

The COURT. That is a point I would like to hear from Mr. Bernhard on further.

I can't get it in my head where the plaintiffs are as they are, and the defendants are individually, and as members of the Commission—but the Commission itself is not a party to the proceedings—how the Court could require a bond in favor of the Commission which is not here.

249 Mr. BERNHARD. The individuals were named in their private capacity and their official capacity, and being named in their official capacity, since the Commission must have certain heads, the Commission itself is involved in this proceeding.

Who else could there have been that the Attorney General and Mr. Shaw could have sought an injunction against if it were not the individual members who were the heads of the Commission? They are the individuals through which the Commission acts.

The service would have to attach to someone, and those were the individuals they decided to name.

Mr. SHAW. We tried that argument in the Eastern District, in the Orleans Parish School Board case.

If it was a suit against State, the eleventh amendment would have protected us. If this was a suit against the United States, or against a Commission, there were certain rules and regulations which we did not follow, which would have stopped us if we did.

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This is a suit against those individuals, and any damages covered by such a bond would only be to cover damages to those individuals in their individual capacities as members of the Commission.

The Commission itself is not before the Court. The
250 bond won't run in its favor. The United States is not before this Court, and that is the real person who is going to lose the money.

According to the citation by the United States Attorney, they won't be able to recover no matter how much you make the bond for, because the bond is not in their favor.

So, it would occur to me that the only people who have anything before this Court would be these six named individuals, and the testimony on the amount of the bond should be how much damage can be done these individuals.

Mr. BERNHARD. This Commission operates under appropriation of Congress and the appropriation is limited, and the Commission will suffer.

Mr. CASHIO. If the Court please, may I make a brief remark in supplementation of the arguments already made:

The rule applicable to security in a case of this kind covers two things. First, costs, and the other damages.

Obviously, the costs referred to in Rule 65(c) are Court costs, which are taxable.

Here, again, obviously the United States——

The COURT. I go along with you there, and maybe I can cut you short: any agency of the United States
251 would not be liable for court costs, and the plaintiffs must advance all costs until they get a decision in their favor on the merits.

Mr. CASHIO. On the question of damages, Rule 65(C) says that the amount of bond fixed by the court in its discretion shall be for the payment of such damages which may be incurred, or suffered by any party who is found to be wrongfully enjoined or restrained.

To supplement what counsel already said, the parties to this action are only the individual members of the Commission and not the Commission itself.

I have not assumed that the Commission were a party to this action. The damages which are contemplated to be covered by this bond would be such damages as could be recovered in a suit at law.

How can the Commission—assuming the Commission is a party to this action—how could the Commission recover a judgment for such damages as it might incur?

It has no authority to be sued, nor can it sue.

In the establishment of this Commission by an act of Congress, it neither gave it the right to sue or to be sued. If it has not authority to sue, then it cannot recover a judgment for damages.

252 So, the obvious consequence of that is that it can suffer no damages because it could not recover a judgment for such damages.

The COURT. All right, gentlemen. I will read this case Mr. Wilson cited and come back as soon as possible and render my decision.

(Whereupon, at this point, a recess was had.)

The COURT. For the record, the Court had just conferred in Chambers with the Attorneys of record in these cases and has discussed with them the case cited by Mr. Wilson for the Commission, Benz, et al. vs. Compania Naviera Hidalgo, S.A., cited by the 9th Circuit Court of Appeals, June 30, 1953, and reported at 205 F. 2d 944.

In that case, as we read it, a certain steamship had been picketed by certain labor union pickets. An application was made to the district court for an interlocutory injunction against the picketing organization, that it was unlawful and that the court granted the interlocutory injunction.

The defendants appealed, and while the case was on appeal, the picketing was stopped and the ship sailed away and the case became moot.

In its per curiam opinion, beginning on page 947 of 205 Fed. 2d, the court pointed out that a surety bond was

253 mandatory under Section 107, title 29, U.S. Code, the Morris-LaGuardia Act, and went on to state that the rule in Federal courts is that in the absence of such a surety bond there may be no recovery for damages for the issuance of a temporary injunction, even though it may have been granted without just cause, citing several authorities, including two decisions by the United States Supreme Court and one by the Fifth Circuit Court of Appeals.

So, we take it as settled, according to those authorities, such damages are not recoverable.

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Here, however, instead of having a mandatory bond as required by the Morris-LaGuardia Act, we have a discretionary matter presented by Rule 65(c), the discretion feature of it having been announced by the Fifth Circuit Court of Appeals in the Ludley case, reported at 252 Fed. 2d 372.

We also note for the record the agreement by Mr. Bernhard that the Commission and its members do not disagree, and concedes that it is purely a matter addressed to the sound discretion of the Court.

Here we have in suit No. 7479, 17 registrars of voters, who are here in their official capacities. They could not sign a bond for costs in their official capacities, because such action would be ultra vires—beyond their authority to act as registrars.

254 Moreover, any such undertaking would be an attempt to bind the public fists of the State of Louisiana, of which they are part.

In Chambers, several of the attorneys representing the registrars offered to sign bonds themselves if the Court were to require it. Our local rules prohibit attorneys, or members of this bar, from signing any bonds. We, of course, have the power to waive that rule, if we see fit, but under all the circumstances in this case, and considering, additionally, that these expenses—these costs—that are claimed by the Commission in its application for the bond, might be classed as all part of the game.

Order requiring no bond

The expenses that they expect to incur—Congress expected them to incur—plus the other considerations that we have mentioned, we believe that in the exercise of our discretion, that no bond should be required, and it is so ordered.

The application will be denied.

Court is adjourned.

Mr. BERNHARD. May I ask one question?

The COURT. Yes.

Mr. BERNHARD. Did that apply to the second suit, as well?

The COURT. Yes, to both suits.

Mr. BERNHARD. May I be excused from further

255 proceedings in this matter?

The COURT. Yes. I suppose Mr. Brooks and Mr. Owen will participate.

Mr. BERNHARD. That is correct.

The COURT. Court is adjourned.

[Reporter's certificate to foregoing transcript omitted in printing.]

261 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS, ETC.

v.

JOHN A. HANNAH, ET ALS., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Order convening three-judge court

July 13, 1959

[File endorsement omitted.]

The Honorable Ben C. Dawkins, Jr., United States District Judge for the Western District of Louisiana, to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, hereby designate the Honorable John M. Wisdom, United States Circuit Judge, and the Honorable Edwin F. Hunter, Jr., United States District Judge for the Western District of Louisiana, to serve with Judge Dawkins as members of, and with him to constitute, the said court to hear and determine the action.

Witness my hand this 13th day of July, 1959.

JOSEPH C. HUTCHISON, Jr.,
Chief Judge, Fifth Circuit.

(Injunctions—Three Judge Courts—Designation, 28 USCA Sec. 2284.)

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263 In United States District Court
Western District of Louisiana
Shreveport Division

SHREVEPORT, LOUISIANA,
July 15th, 1959.

In re Larche v. Hannah, Civil Action No. 7479

Honorable JOHN MINOR WISDOM,
United States Circuit Judge,
Hayden Hall, Apartment 6–B,
New York University,
New York, New York.

Honorable EDWIN F. HUNTER, Jr.,
United States District Judge,
Lake Charles, Louisiana.

GENTLEMEN: I enclose copy of Order dated July 13th, 1959, signed by Honorable Joseph C. Hutcheson, Jr., Chief Judge of this Circuit, convening a three-judge Court to act in the above styled civil action, with particular reference to the constitutionality *vel non* of the Act of Congress creating the Commission on Civil Rights, Public Law 85–315, 71 Stat. 634, 42 U.S.C.A. § 1975 a–e, this Order having been issued after examination of the record, briefs and opinion by Judge Hutcheson, as forwarded to him in our letter of July 12th, copy enclosed.

I already have sent Judge Hunter a copy of my opinion granting a temporary restraining order in this case, and in a related case not involving a three-judge Court, and enclose herewith to Judge Wisdom a copy thereof for his information.

I also will have our Clerk make, and send to each of you, photo copies of the complaints in both cases, as well as the briefs which were filed with me in connection with the applications for temporary restraining orders.

In the restraining orders issued by me on July 12th, I provided for a return date on the rules *nisi* of July 22nd, at 9:30 a.m., at Shreveport, Louisiana, this, of course, being in keeping with Rule 65, Fed. Rules Civ. Proc., which provides that a restraining order may not continue in force, unless renewed, beyond ten days from issuance. It is my understanding that Judge Hunter has other pressing commitments through August 1st, as does the writer. We have been unable to contact Judge

Wisdom by telephone in New York, so are advising him
264 of this by letter; and, therefore, we do not know what his schedule may be, except that Judge Hutcheson advised us he would return to New Orleans approximately on July 20th. However, because of the situation of Judge Hunter and myself, and also because I am sure all of us will want to thoroughly study the matters, on briefs to be filed by respective counsel, prior to hearing arguments on the constitutional questions presented, Judge Hunter and I have agreed, subject to Judge Wisdom's approval, that I will renew and continue the restraining orders in effect, so that the *status quo* may be maintained until a hearing can be held at Shreveport, at 9:30 a.m. on Friday, August 7th.

Meantime, I have instructed the attorneys involved, through conversations with Honorable T. Fitzhugh Wilson, United States Attorney for this District, and Honorable Jack P. F. Gremillion, Attorney General of Louisiana, that both sides are to file full briefs on the constitutional questions by July 31st, 1959. By copies of this letter to the last named gentlemen, I also am asking for full briefs from both sides respecting the application for an interlocutory injunction in Civil Action No. 7480, likewise to be filed by July 31st.

With best personal regards to each of you, I am,

Sincerely yours,

BEN C. DAWKINS, Jr.,
U.S. District Judge.

BCDjr:mf
Enclosures.

Copies to Honorable T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, Baton Rouge, Louisiana.

P.S.—We request that Messrs. Wilson and Gremillion notify all other counsel allied with them of the contents of this letter.

B. C. D., Jr.

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265 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To Rev. Theodore S. Hesburgh, Ind. & as a member of the Commission on Civil Rights, et al. Greeting:

By virture of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order duly certified under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, Rev. Theodore S. Hesburgh, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or holding any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La. until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three Judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of

Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.
By THOMAS W. THOMPSON,
Chief Deputy Clerk.

265a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET . . . . , DATE . . . .

Received Shreveport, La., July 13, 1959 Executed Barksdale Air Force Base, La. by delivering certified copy of this writ, together with certified copy of Bill of Complaint and Order to the within named Rev. Theodore S. Hesburgh individually and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

Fee: $2.00.

DONALD C. MOSELEY,
U.S. Marshal.
By JAMES L. JORDAN,
Deputy.

[File endorsement omitted.]

266 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To Doyle E. Carlton, Ind. & as a member of the Commission on Civil Rights, Greeting:

By virtue of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order, duly certified

COPY BOUND CLOSE IN CENTER

under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, Doyle E. Carlton, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or holding any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La. until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three Judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July, 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July, 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.

By THOMAS W. THOMPSON,
Chief Deputy Clerk.

266a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET . . . ., DATE . . . .

Received Shreveport, La., July 13, 1959. Executed Barksdale Air Force Base, La., by delivering certified copy of this Writ, together with certified copy of Bill of Complaint and Order to within-named Doyle E. Carlton individually and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

Fee: $2.00.

DONALD C. MOSELEY,
U.S. Marshal.

By JAMES L. JORDAN,
Deputy.

[File endorsement omitted.]

267 In United States District Court, Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, IND. & IN HER CAPACITY AS REGISTRAR OF VOTERS, FOR THE PARISH OF MOREHOUSE, ET AL.

v.

JOHN A. HANNAH, IND. & AS A MEMBER OF THE COMMISSION ON CIVIL RIGHTS, ET AL.

Temporary Restraining Order and Rule To Show Cause

July 12, 1959

To John A. Hannah, Individually and as a member of the Commission on Civil Rights, Greeting:

By virtue of an Order issued out of the Honorable, the District Court of the United States for the Western District of Louisiana, in the above numbered and entitled cause on the docket of said Court, a copy of said Order duly certified under the Seal of said Court, accompanying this Writ; in the name of the President of the United States of America;

You, John A. Hannah, Ind., etc., your attorneys, agents, servants, and employees, and all other persons acting by or under your authority, direction, or control, are hereby specially restrained, enjoined, and prohibited from proceeding under or hodling any hearings, particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, La., until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full court of three judges to be held as hereinafter ordered, on July 22, 1959, until the further orders of this Court; and,

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You, and each of you, are hereby commanded to show cause, if any you have or can, before said Court, at the City of Shreveport, Louisiana, at 9:30 A.M. on the 22nd day of July, 1959, why a preliminary injunction should not issue as prayed for; and in all other respects, you are hereby commanded to comply with the directions contained in said Order.

Hereof fail not under penalty of the law.

Witness the Honorable Ben C. Dawkins, Jr., Judge of the United States District Court for the Western District of Louisiana, and the seal of said Court, at the City of Shreveport, Louisiana, on this 12th day of July, 1959, and the 184th year of American Independence.

ALTON L. CURTIS,
Clerk.

By THOMAS W. THOMPSON,
Chief Deputy Clerk.

267a U.S. MARSHAL'S RETURN, MARSHAL'S DOCKET ——, DATE ——

Received Shreveport, La., July 13, 1959. Executed Barksdale Air Force Base, La., by delivering certified copy of this Writ, together with certified copy of Bill of Complaint and Order to within-named John A. Hannah individually, and as a member of the Commission on Civil Rights, in person at 8:55 A.M., July 13, 1959.

DONALD C. MOSELEY,
U.S. Marshal.

By James L. Jordan,
JAMES L. JORDAN,
Deputy.

Mileage, $1.20; fee, $2.00; $3.20.

[File endorsement omitted.]

268 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET ALS., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET ALS., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Motion for Continuing in Effect Temporary Restraining Order and for Continuance of Rule Nisi for Preliminary Injunction

July 22, 1959

[File endorsement omitted.]

To the Honorable, the Judges of the United States District Court, for the Western District of Louisiana, Shreveport Division:

On motion of Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners herein respectively, Registrars of Voters for the respective parishes hereinbefore named; and,

On suggesting to the Court that temporary restraining order was issued herein on July 12, 1959, at or about 5:30 P.M. against the defendants herein, which restraining order will expire on July 22, 1959, at 9:30 A.M.; and,

On further suggesting to the Court that the rule nisi issued herein is set for hearing at 9:30 A.M., August 7, 1959; and,

On further suggesting to the Court that your movants and defendants' counsel have been informed that due to the condition of the docket in this Honorable Court and previous commitments made prior to the issuance of the above mentioned orders that it will be impossible for the said rule to be heard at the time and place previously fixed, namely, July 22, 1959:

It is ordered by the Court, that the temporary restraining order heretofore issued be continued in full force and effect from July 22, 1959, until 9:30 A.M., August 1st, 1959, or until the rule for a preliminary injunction be heard, and that the

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hearing on the rule nisi be likewise continued from July 22, 1959, until 9:30 A.M., August 7, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

Issued at Shreveport, Louisiana, at 9:30 o'clock, on this, the 22nd day of July, 1959.

Certified copy hereof received at S'port, La., 7–22–59, of Clerk, U.S. District Court, above mentioned documents. J. K., Deputy U.S. Marshal.

269 Above motion prepared and respectfully submitted by Jack P. F. Gremillion, Attorney General of State of Louisiana and Attorney for Petitioners.

JACK P. F. GREMILLION,
Attorney General of Louisiana.
By FERDINAND A. CASHIO,
Special Assistant Attorney General.

[Certificate of service omitted in printing.]

270 [Return on service of writ omitted in printing.]

275 In United States District Court, Western District of Louisiana

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, July 28, 1959.

Jack P. F. Gremillion, Attorney General.

In re: Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

CLERK,
U.S. District Court,
Western District of Louisiana,
Shreveport, Louisiana.

[File endorsement omitted.]

DEAR SIR: Please find enclosed copy of letter and proposed stipulations transmitted to counsel for defendants in the above captioned cause.

Please file same under record.

Yours very truly,

John E. Jackson, Jr.,
JOHN E. JACKSON, Jr.,
Special Counsel to the Attorney General.

JEJ:ec.
Enclosures.

276

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, July 30, 1959.

Jack P. F. Gremillon, Attorney General.

In re: Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

Honorable T. FITZHUGH WILSON,
United States Attorney,
Post Office Building,
Shreveport, La.

DEAR MR. WILSON: Attached you will find an original and three copies of proposed stipulations of fact which are submitted to you in an effort to facilitate and expedite the court's work on August 7.

Complainants deem that these stipulations are fair and reflect the facts and record and express uncontested admissions from both sides. It was therefore concluded that it would not be necessary to proceed pursuant to Rule 36 of the Federal Rules of Civil Procedure; however our request to you for your approval of the attached set of stipulations is based and founded upon the spirit and purpose of Rule 36.

It would be greatly appreciated should you honor this request if you will sign the original and two copies of the stipulations and file same with the court.

Very truly yours,

JACK P. F. GREMILLION,
Attorney General.

By M.E.C.

JPFG:ec.
Enclosures (4).

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277 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 7479

Filed: August —, 1959. ——— ———, *Deputy Clerk.*

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA, COMPLAINANTS

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS, DEFENDANTS

STIPULATION IN AND BETWEEN COMPLAINANTS AND DEFENDANTS

Filed July 29, 1959

1

Complainants, Mrs. Margaret M. Larche, Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Sidney W. Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry Earl Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell, are citizens of the United States and the State of Louisiana, taxpayers, qualified voters, and Registrars of Voters in and for their respective parishes of the State of Louisi-

2

Defendants: John A. Hannah, a resident of East Lansing, Michigan; Robert C. Storey, a resident of Dallas, Texas; John S. Battle, a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, a resident of South Bend, Indiana; Doyle E. Carlton, a resident of Tampa, Florida; and George M. Johnson, a resident of the State of California, presently residing in Washington, D.C., are citizens of the United States and, as well, members of the Commission on Civil Rights.

3

278 The Attorney General of Louisiana, Honorable Jack P. F. Gremillion, is legal counsel designated by the legislature for all Registrars of Voters of the State of Louisiana, and the other counsel of record are attorneys for the complainants respectively in their individual capacities.

4

Persons and counsel heretofore representing the Commission, as well as the Attorney General of the United States and members of his staff and the United States Attorney for the Western District of Louisiana, Honorable T. Fitzhugh Wilson, represent defendants.

5

Honorable Gordon M. Tiffany is the duly appointed Staff Director for the Commission on Civil Rights and has acted by virtue of such authority with all of the complainants herein as well as with their counsel and under the express authority of the Civil Rights Commission.

6

All of your complainants or their legal counsel since the early part of the year, 1959, have been in contact with duly accredited representatives of the Civil Rights Commission relative to certain alleged complaints registered with the Commission by sworn affidavits as to interference with their rights to vote through alleged deprivation thereof on account of the alleged accusers' race, color, religion or national origin.

7

The Commission, through its duly authorized Staff Director at conferences with Attorney General, Jack P. F. Gre-
279 million, relative to such alleged complaints, the import of which was to the effect that the Commission would hold a hearing relative thereto or in order to possibly obviate the necessity of such a hearing, the Commission would prepare and submit to the Registrars questionnaires relative to such complaints. There is a conflict as to whether these questionnaires were to be submitted only after giving the names of the accusers and the nature of their accusations. Prior thereto

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attorney, W. M. Shaw, on behalf of his client addressed a letter to the Commission dated March 14, 1959, which was replied to by the Commission under date of April 14, 1959, signed by Director, Tiffany, reading as follows:

"The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

"Having considered the same, the request was denied by the following statement adopted by the Commission:

" 'The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints.' "

A copy of the resolution referred to in the same letter is attached to complainants' petition.

8

Thereafter, director Tiffany furnished to each of the Registrars and to Attorney General, Jack P. F. Gremillion a questionnaire (copy attached). After conferences with the Registrars of Voters, Attorney General Gremillion addressed a letter to Director Tiffany dated May 28, 1959 (copy attached) to which Director Tiffany replied on May 29, 1959 by telegram (copy attached), which was replied to by Attorney General Gremillion on June 2, 1959 (copy attached). There was no
280 further communication between Attorney General Gremillion or the complainants herein with the Commission until the complainants received a subpoena, copy of which is attached to the petition filed herein.

9

A hearing on the petition filed herein was held at Shreveport, Louisiana, on July 10, 1959, before Honorable Ben C. Dawkins, Jr., Chief Judge, and, thereafter, upon oral motion by defendants for the complainants to post bond a hearing was held before Judge Dawkins on July 13, 1959.

10

It is admitted that the Commission has in its possession sixty-seven (67) sworn written complaints which allege that complainants have deprived certain citizens of the United States of their right to vote or to have their vote counted because of their color, race, religion or national origin and that the Commission has refused to divulge the names of the authors of such complaints or the contents of the complaints to your complainants.

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Attorney for Complainants.
By M. E. CULLIGAN,
Assistant Attorney General.

Shreveport, Louisiana, this —— day of August, 1959.

282 In the United States District Court for the Western District of Louisiana Shreveport Division

[File endorsement omitted.]

[Title omitted.]

Motion to continue in effect restraining order

Filed July 31, 1959

To the Honorable, the Judges of the United States District Court, for the Western District of Louisiana:

On motion of Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners herein respectively, Registrars of Voters for the respective parishes hereinbefore named; and,

On suggesting to the Court that a temporary restraining order was issued herein on July 12, 1959, at or about 5:30 P.M. against the defendants herein, which by order of this Court signed and issued at Shreveport, Louisiana, at 9:30 A.M., on July 22, 1959, was extended to and continued in full force and effect from that date until 9:30 A.M., on August 1st, 1959; and,

On further suggesting to the Court that because of the condition of the docket of this Court, and previous commitments

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made, in the same order signed and issued on July 22, 1959, as aforesaid, the hearing of the rule nisi for a preliminary injunction was continued from July 22, 1959 to August 7th, 1959, at 9:30 A.M.; and,

On further suggesting to the Court that the restraining order herein will expire at 9:30 A.M., on August 1st, 1959; and,

On further suggesting to the Court that because of the time and date as now fixed for the trial of the said rule nisi for preliminary injunction, namely: at 9:30 A.M., on August
283 7th, 1959, a recognized necessity exists for the extension and continuance in full force and effect of the temporary restraining order from 9:30 A.M., on August 1st, 1959, to the time and date of said trial of the rule nisi for preliminary injunction at 9:30 A.M., on August 7th, 1959; and,

On further suggestion of counsel herein, the Court takes special cognizance of the need to extend and continue said temporary restraining order, as aforesaid:

It is ordered by the Court, ex proprio motu, that the temporary restraining order heretofore issued herein be continued in full force and effect from 9: 30 A.M., on August 1st, 1959, until 9: 30 A.M., on August 7th, 1959.

BEN C. DAWKINS, Jr.,
United States District Judge.

Issued at Shreveport, Louisiana, at 9: 30 o'clock A.M., on this the 31st day of July, A.D., 1959.

Certified copy hereof received at S'port, La., 7–31–59 of clerk, U.S. District Court, above mentioned documents. Deputy U.S. Marshal.

Above Motion prepared and respectfully submitted by Jack P. F. Gremillion, Attorney General of the State of Louisiana and Attorney for Petitioners.

JACK P. F. GREMILLION,
Attorney General of Louisiana,
By Ferdinand A. Cashio,
FERDINAND A. CASHIO,
Special Assistant Attorney General.

[Certificate of service omitted in printing.]

284 In the United States District Court for the Western District of Louisiana, Shreveport Division

[Title omitted.]
[File endorsement omitted.]

ANSWER

Filed July 31, 1959

In response to the rule to show cause issued by this Court, comes now the Attorney General of the United States by W. Wilson White, Assistant Attorney General and T. Fitzhugh Wilson, United States Attorney, as attorneys for the United States Commission on Civil Rights and as attorneys for John A. Hannah, Robert G. Storey, John S. Battle, Theodore S. Hesburgh, Doyle E. Carlton and George M. Johnson, the members of said Commission in their official and individual capacities and answer the complaint herein as follows:

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Injunctive relief is unavailable because there is no legal injury or threat of legal injury to plaintiffs.

285

Third Defense

Injunctive relief is unavailable and premature because plaintiffs have adequate remedies at law.

Fourth Defense

1. Defendants admit the allegations contained in paragraph 1.

2. In answer to paragraphs 2 and 3 defendants admit the content of Exhibits A and B referred to in paragraph 3 and incorporated therein, and admit that the names of persons who have made written allegations to the Commission and the content of such writings have not been revealed to plaintiffs. Defendants deny that the Commission advised plaintiffs' attorney that it would "under no circumstances" divulge the names of such persons. On the contrary many of such persons were subpoenaed to appear and testify at the public hearing scheduled by the Commission which is the subject matter of this action.

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3. With respect to paragraphs 4, 5, 6, 7, 8, and 9, defendants admit those portions of said paragraphs which allege that plaintiffs are citizens of the United States and of the State of Louisiana (par. 5) and registrars of voters in their respective parishes in the State of Louisiana (par. 6), but defendants are not further required to plead to said paragraphs, as the allegations contained therein are conclusions of law, but insofar as an answer may be required defendants deny each and every allegation contained in said paragraphs.

4. Defendants admit the allegations contained in paragraph 10 except the allegation that registrars "thus summoned
286 are deprived of their constitutional right of cross-examination," to which allegation defendants are not required to plead, as it is a conclusion of law, but insofar as an answer may be required it is denied.

5. Paragraphs 11, 12, 13, 15, 16, contain conclusions of law to which defendants are not required to plead, but insofar as an answer may be required each and every allegation in said paragraphs is denied.

6. With respect to paragraph 14, defendants admit that plaintiffs have been advised by the Attorney General of Louisiana as alleged therein, and that neither the Commission nor its agents have revealed the content or the subscribing names of the written allegations received by the Commission. Defendants are not required to plead further with respect to said paragraph, as the allegations are conclusions of law, but insofar as an answer may be required said allegations are denied.

7. Defendants deny that portion of paragraph 17 which alleges that the proposed hearing "is doubtless designed to foster the interest of some alleged applicant or applicants for registration under Louisiana law without affording any Registrar of Voters any opportunity of knowing the facts and circumstances surrounding the complaint". On the contrary said hearing was to be held for the purpose and only the purpose of fulfilling the Commission's statutory obligations under the Civil Rights Act of 1957, Public Law 85–315. Defendants are not required to plead further with respect to paragraph 17, as the matters contained therein are conclusions of law, but insofar as an answer may be required such allegations are denied.

287 8. Defendants deny each and every allegation contained in paragraphs 18, 19, and 20.

Wherefore, it is respectfully requested that this Court discharge the rule to show cause, dismiss the action and enter judgment for the defendants.

W. Wilson White,
W. WILSON WHITE,
Assistant Attorney General.
T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney.

288 In United States District Court, Western District of Louisiana

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
New Orleans, La., July 30, 1959.

U.S. District Court, Western District of Louisiana. Filed August 1, 1959. By Alton L. Curtis, Clerk.

Jack P. F. Gremillion, Attorney General.

In re Larche et al. v. Civil Rights Commission, No. 7479, Civil Action

CLERK, UNITED STATES DISTRICT COURT,
Western District of Louisiana,
Post Office Building,
Shreveport, Louisiana.

DEAR SIR: Please find attached original affidavits in triplicate to be filed in the above captioned cause for and in behalf of complainants.

These affidavits are filed in support of complainants motion for preliminary injunction in the premises which motion is scheduled for hearing on Friday, August 7, 1959.

Defendants have been served with copies of all affidavits through their Attorney of Record by placing same in the United States mail on this first day of August, 1959.

Yours very truly,

John E. Jackson, Jr.,
JOHN E. JACKSON, Jr.,
Special Counsel to the Attorney General.

JEJ/le.
att.

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289 *Affidavit*

Filed August 1, 1959

[File endorsement omitted.]

STATE OF LOUISANA,
Parish of Madison (ss):

Before me, the undersigned authority, personally came and appeared Katherine S. Ward, known to me, who being first duly sworn did depose and say:

That your affiant is the duly appointed, qualified, and acting Registrar of Voters of the Parish of Madison, State of Louisiana, that affiant is one of the complainants in the case entitled Mrs. Margaret M. Larche, et al v. John A. Hannah, et al, Civil Action No. 7479, United States District Court, Western District of Louisiana, Shreveport Division; that your affiant was served with a subpoena issued by Honorable John A. Hannah, Chairman of the Commission on Civil Rights ordering your affiant to appear and testify and as well produce all of the official records of the office of the Registrar of Voters, Parish of Madison at a hearing to be held July 13, 1959, at the United States courtroom, Shreveport, Louisiana, located in the Parish of Caddo; that for the reasons as outlined in the petition and pleadings filed in the said cause, your affiant suffers and will continue to suffer irreparable injury; that affiant is informed that the Commission on Civil Rights has a complaint or complaints against affiant accusing affiant of having deprived certain United States citizens whose names are unknown to your petitioner of their right to vote or to have their vote counted because of their color, race, religion, or national origin; that a questionnaire prepared by the Commission on Civil Rights was received by affiant which has not been answered; that affiant's legal counsel in this matter appointed by law is Attorney General, Jack P. F. Gremillion, whose advice and counsel has been relied upon and followed; that affiant has never been furnished by the Commission on Civil Rights nor by anyone with the names of affiant's accusers or the nature and cause of the accusation made against affiant before the Commission on Civil Rights.

KATHERINE S. WARD.

Sworn to and subscribed before me this 29 day of July, 1959.

[SEAL] GRACE GRIMES.

Clerk's note

Similar affidavits executed by Mrs. Mae Lucky, U. Charles Mitchell, Sidney Wells Platt, Henry Earl Palmer, Thomas W. Thompson, Mrs. L. L. Linton, Johnie L. Kelly, and Margaret M. Larche appearing on pages 290 through 297 inclusive are omitted in printing.

298 [Certificate of Service of affidavits omitted in printing.]

333 In United States District Court for the Western District of Louisiana

Affidavit of Jack P. F. Gremillion

Filed August 1, 1959

[File endorsement omitted.]

STATE OF LOUISIANA,
Parish of Orleans (ss):

Before me, the undersigned authority, a notary public duly qualified and commissioned in and for the Parish of Orleans, State of Louisiana, personally came and appeared Jack P. F. Gremillion, known to me, who being first duly sworn did depose and say:

That he is the duly elected, qualified, and acting Attorney General of the State of Louisiana and by virtue of his office is attorney for the Registrars of Voters of all parishes in the State of Louisiana as provided in Act 482 of 1958, excerpt from which is attached hereto and made part hereof, the same as if copied herein in extenso; that your affiant is a member of the Bar of the State of Louisiana and a member of the Bar of the Supreme Court of the United States; that the Commission on Civil Rights through its duly appointed Director, Honorable Gordon M. Tiffany and other authorized representatives of the said Commission did contact affiant both in person and by means of correspondence, as is more fully explained hereinafter, to-wit:

The fact that your affiant under law is and was the attorney for the registrars of voters was fully conveyed to the Commission on Civil Rights through its Staff Director, Gordon M. Tiffany, as early as January of this year; that affiant had an ex-

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tensive conference with Mr. Gordon M. Tiffany, the Director of the Commission on Civil Rights, on January 22, 1959, and, as a result of this conference, wrote a letter dated January 23, 1959, to all Registrars of Voters in the State of Louisiana and all District Attorneys and Assistant District Attorneys of Louisiana outlining the agreements reached and made in and between affiant, as attorney for the registrars of voters, and the Commission on Civil Rights, all of which is reflected by the letter attached dated January 23, 1959, signed Jack P. F. Gremillion, Attorney General, marked Exhibit "A".

Verbal instructions as well were given to our Assistant Attorneys General and members of my staff for them to give their complete cooperation to the Commission on Civil Rights, its staff members and employees, and to assist them in any manner in the conduct of their investigations and inquiries.

On January 29, 1959, affiant received letter dated January 28, 1959, from Gordon M. Tiffany, Staff Director of the Commission on Civil Rights, in his official capacity acknowledging copy of Act 482 of 1958 and acknowledging and thanking affiant and the officials of the State of Louisiana for their spirit of cooperation, which letter is attached and marked Exhibit "B".

That on March 12, 1959, Commission on Civil Rights held an interview in Minden, Louisiana, with Mrs. Lannie Linton, Registrar of Voters, Claiborne Parish, Louisiana, through Colonel A. H. Rosenfeld, Jr., Chief of the Complaints Division of the Commission, which prompted Mrs. Linton's personal attorney, W. M. Shaw, in the protection of her rights to address a letter dated March 14, 1959, to Honorable Gordon M. Tiffany, Director, Federal Civil Rights Commission, copy attached marked Exhibit "C".

Interviews were held in the same manner by Colonel Rosenfeld with the Registrars of Voters for the Parishes of Caddo and Webster, State of Louisiana, transcripts of which interviews were forwarded by your affiant to Colonel Rosenfeld under cover of letter dated March 23, 1959, copy attached marked Exhibit "D", for which complete cooperation thanks were given by Colonel Rosenfeld, as evidenced by his letter addressed to affiant, dated March 25, 1959, marked Exhibit "E".

334 Reply to Mr. Shaw's letter of March 14, 1959, by Gordon M. Tiffany, Staff Director, Commission on Civil

Rights, was made under date of April 14, 1959, exactly one month later, a copy of which reply was mailed to your affiant on the same date, both of which are attached and marked Exhibit "F" and Exhibit "G" respectively.

On May 7, 1959, letter addressed to affiant was received from W. Wilson White, Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, dated May 6, 1959, and reply thereto was made by affiant under date of May 13, 1959, copies of which letters are attached and marked Exhibits "H" and "I" respectively. A copy of the letter dated May 13 replying to White's letter of May 6 was forwarded to Gordon M. Tiffany, Staff Director, Commission on Civil Rights, for which acknowledgment was given by Tiffany under date of May 18, 1959, copy of which is attached and marked Exhibit "J", in which Mr. Tiffany outlined in detail his understanding that there was no liaison whatsoever between the Commission on Civil Rights and the United States Department of Justice.

On May 14, 1959, affiant received two letters under date of May 13 from Mr. Gordon M. Tiffany, Staff Director, Commission on Civil Rights, Washington D.C.

1. The first of which was relative to the statutory authority of state and local officials with respect to the conduct of elections in the State of Louisiana, a copy of which letter is attached and marked Exhibit "K". A reply thereto was made by your affiant by a letter under date of May 20, 1959, copy of which is attached and marked Exhibit "L", outlining in full all laws and constitutional provisions of the State of Louisiana relative to the conduct of elections, elections themselves, and suffrage.

2. The second of which, dated May 13, 1959, enclosed interrogatories consisting of some three hundred fifteen questions, a copy of which letter is attached and marked Exhibit "M". A reply thereto was made by your affiant by letter on May 28, 1959, a copy of which is attached and marked Exhibit "N", showing that no question or interrogatory offered was identifiable with any specific complaint and further suggesting that other interrogatories or questions could be confected and drawn which the Registrars could and would be willing to answer. On May 29, 1959, affiant received a reply to his letter of May 28 1959, copy of which is attached and marked Exhibit "O", which is self-explanatory.

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Mr. Gordon M. Tiffany, Staff Director, Commission on Civil Rights, by letter dated May 29, 1959, addressed to your affiant acknowledged receipt of your affiant's letter to him dated May 20, 1959, and also confirmed the telegram received by affiant signed by Gordon M. Tiffany dated May 29, 1959, copy of which is attached and marked Exhibit "P".

Reply by your affiant to telegram of May 29, 1959, was made by letter dated June 2, 1959, copy of which is attached and marked Exhibit "Q". Acknowledgement of affiant's letter of June 2, 1959, was made by Gordon M. Tiffany by letter dated June 4, 1959, copy of which is attached and marked Exhibit "R", stating that the entire matter was at the point for a policy decision on the part of the Commission on Civil Rights and that it would be referred to the Commission at its next meeting.

Your affiant received on June 15, 1959, letter addressed to him dated June 11, 1959, signed by Gordon M. Tiffany, Staff Director, Commission on Civil Rights, advising your affiant of the decision of the Commission to hold a hearing in Shreveport, Louisiana, on July 13, 1959, copy of which is attached and marked Exhibit "S", which did not set forth either
335 the time, place, names of accusers, accusations, or any of the parties to be called before the hearing. It did not set forth the membership of the body or committee which was scheduled to hold such hearing.

On July 13, 1959, date upon which the hearing was scheduled, your affiant's office in Baton Rouge, Louisiana, received letter dated July 8, 1959, signed by Gordon M. Tiffany, Staff Director, Commission on Civil Rights, notifying affiant of the hearing on July 13, 1959, in Shreveport and merely enclosing a copy of the Rules of Procedure of the Commission and statutes establishing the Commission. It did not set forth time, place, names of accusers, accusations, parties to be called, subject matter of the hearing, or membership of the body or committee to hold the meeting. At the time of receipt of this letter, affiant was in Shreveport, Louisiana, some 325 miles away from his office. A copy of this letter dated July 8, 1959, is attached and marked Exhibit "T".

Your affiant at all times has attempted to cooperate fully with the Commission on Civil Rights, its representatives and

employees, within the recognized limits as established by law and will continue to do so.

336 Jack P. F. Gremillion.
JACK P. F. GREMILLION.

Sworn to and subscribed before me, this 24th day of July, 1959, at New Orleans, Louisiana.

[SEAL] M. E. CULLIGAN, Sr.,
Notary Public.

337 *Attachment to Affidavit*

EXCERPT FROM ACT 482 OF 1958

The Attorney General shall give his advice and aid to any Registrar of Voters, deputy Registrar of Voters, and/or any employees of a Registrar of Voters, whose official acts have been or are being inquired into, challenged or disputed before any Federal Court, Federal Grand Jury, Federal Board, Federal Commission or Federal official, and he shall represent any Registrar of Voters, assistant Registrar of Voters, or employee in any suit or prosecution instituted in a Federal Court which relates to the official conduct of his office, all without costs or expense to said Registrar, Deputy Registrar and/or employee.

338 *Exhibit A to affidavit*

JANUARY 23, 1959.

(NOTE: This Letter Was Written Individually to Each Registrar of Voters in the State.)

Mr. Gordon M. Tiffany, the Director of the National Civil Rights Commission, called on me yesterday in Baton Rouge to discuss the future activities of his commission in the State of Louisiana. As you probably know, by various press releases, a State Advisory Committee has been set up in this State under the authority of the Congressional Civil Rights Act.

The Legislature adopted Act 482 of 1958, which made the Attorney General the legal advisor for all Registrars in any hearing or investigation, etc., before a Federal board or commission. I advised Mr. Tiffany of this act and he assured me that prior to any questioning or investigation of any Registrar, he would contact me first. He also advised me that the commission would use only their investigators and not those of

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the F.B.I. He also assured me that their purpose was to determine the facts objectively.

As a result of these assurances, I wish to advise you, as your attorney, that in the event any person calls upon you or your office claiming to be an investigator of the Civil Rights Commission, that you seek the benefit of legal counsel, either through your District Attorney or me, prior to discussing the matter with any person or persons.

No inference is to be drawn from this letter that any Registrar has reason to conceal anything from persons lawfully authorized to conduct investigations. The purpose of this letter is to inform you of the understanding which has been reached between the Director and this office as to procedure in the event of investigation.

We wish to assure you that we will render every assistance possible to you, either through this office, or through the cooperation of your District Attorney.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

cc: To all District Attorneys and Assistant District Attorneys in State.

339 *Exhibit B to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., January 28, 1959.

MY DEAR GENERAL: I wish to express my appreciation for your cordial hospitality on my recent visit to Louisiana. It appears clear to me that the spirit of cooperation which I encountered when I met with you is equally shared by this office. I also appreciate receiving the copy of Act No. 482 which you obtained for me.

I am enclosing a copy of our Rules of Procedure, which might be of some interest to you. I think a careful examination will reveal no apparent conflict between your obligations under State law and the rights of witnesses in any hearing conducted by this Commission. However, I would point out, as we discussed at our meeting, that the hearing is simply one method of recording testimony. It is a means, not an end in itself. Where a spirit of cooperation prevails, it may be unnecessary to conduct hearing. If it becomes necessary (following pre-

liminary inquiry) for us to call on registrars of voters, we will be pleased to advise you.

Very truly yours,

(S) GORDON M. TIFFANY,
Staff Director.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
State Capitol, Baton Rouge, Louisiana.

Exhibit C to affidavit

MEADORS, SHAW AND MEADORS,
ATTORNEYS AT LAW,
Homer, Louisiana, March 14, 1959.

Via Airmail special delivery. Return receipt requested.

Honorable GORDON M. TIFFANY,
Director, Federal Civil Rights Com.,
Washington 25, D.C.

DEAR SIR: We are writing on behalf of Mrs. Lannie Linton, Registrar of Voters, Claiborne Parish, Louisiana. At a meeting in Minden, Louisiana held on March 12, 1959, Colonel A. M. Rosenfeld, Chief of the Complaints Division of your Commission, stated that there was on file with your Commission four sworn statements charging the registrar with depriving citizens in Claiborne Parish of their voting privilege by reason of color, race, religion, or national origin.

My client knows these sworn allegations to be false since no such discrimination has been practiced. Accordingly, she wishes to prefer charges of perjury against the party or parties responsible for these misrepresentations. L.R.S. 14:123 designates such misrepresentations as perjury, a felony under the laws of Louisiana. Your attention is also invited to L.R.S. 14:25 which defines accessory after the fact as being any person who aids a felon with the intent that he may escape arrest, trial, conviction or punishment. An accessory after the fact is also guilty of a felony.

We herewith formally demand that you forward to us copies of the affidavits referred to, in order that a proper presentment may be made to the Grand Jury.

Colonel Rosenfeld also advised that agents from the Commission had investigated each of the affidavits by personal

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visit to the affiants here in Louisiana. This means that the crime has been completed in Louisiana.

I need not remind you that proceedings before a Grand Jury are secret, and no affiant need fear reprisals if he can establish his innocence to the satisfaction of such Grand Jury.

We shall await your reply and copies of the accusations.

Very truly yours,

W. M. SHAW.

341 *Exhibit D to affidavit*

MARCH 23, 1959.

Re: Interviews: U. Charles Mitchell, Registrar of Voters, Caddo Parish, Louisiana, and Mrs. Winnice P. Clement, Registrar of Voters, Webster Parish, Louisiana

Colonel A. H. ROSENFELD, Jr.
Director, Office of Complaints, Information and Survey, Commission of Civil Rights, Washington, D.C.

DEAR COLONEL ROSENFELD: In accordance with our agreement, I am enclosing copies of the captioned interviews taken in Caddo and Webster Parishes, Louisiana.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

342 *Exhibit E to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., 25 March 1959.

DEAR GENERAL: This will acknowledge receipt of the copies of the interviews taken in Caddo and Webster Parishes, Louisiana, on 13 March 1959. Will you please accept my thanks for forwarding this transcription to me.

Mr. Tiffany also joins me in thanking you for your cooperation and for the arrangements for the interview.

Sincerely yours,

(S) A. H. ROSENFELD, Jr.,
Director, Office of Complaints, Information and Survey.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
State Capital, Baton Rouge, Louisiana.

343 *Exhibit F to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington, 25, D.C., April 14, 1959.

DEAR MR. GREMILLION: For your information, the enclosed has been sent to Mr. Shaw.

Sincerely yours,

(S) GORDON M. TIFFANY,
Staff Director.

Hon. JACK P. F. GREMILLION,
Attorney General, State of Louisiana,
Baton Rouge, Louisiana.
Enclosure.

344 *Exhibit "G" to affidavit*

APRIL 14, 1959.

DEAR MR. SHAW: The Commission on Civil Rights at a meeting duly convened in Atlanta, Georgia, on April 10, considered your request of March 14, 1959, for the copies of certain affidavits filed with this Commission.

Having considered the same, the request was denied by the following statement adopted by the Commission:

"The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

GORDON M. TIFFANY,
Staff Director.
(*For the Commission on Civil Rights*).

Mr. W. M. SHAW,
Meadors, Shaw & Meadors,
South Main Street, Homer, Louisiana.

345 *Exhibit "H" to affidavit*

DEPARTMENT OF JUSTICE,
Washington, May 6, 1959.

Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR MR. GREMILLION: As you are no doubt aware, the Department of Justice has been conducting an investigation in Webster Parish, Louisiana, of allegations of violations of the laws within the jurisdiction of the Department relating to discrimination against voters. In connection with this investigation, a formal request was made on December 1, 1958, by Department representatives of Mrs. Winnice Pratt Clement, Registrar of Voters, for permission to inspect the registration records in Webster Parish. The Department's representatives were advised that this request would be referred to you for decision. To date, the Department has received no communication indicating either that the request would be granted or denied.

I should appreciate very much your informing me as to whether this request will or will not be granted.

Sincerely,

(S) W. WILSON WHITE,
Assistant Attorney General,
Civil Rights Division.

346 *Exhibit "I" to affidavit*

MAY 13, 1959.

Mr. W. WILSON WHITE,
Assistant Attorney General,
Civil Rights Division,
Department of Justice, Washington, D.C.

DEAR MR. WHITE: I am in receipt of your registered letter of May 6, 1959, receipt requested, which reached this office today, concerning an investigation in Webster Parish, Louisiana, of alleged violations of laws relating to discrimination against voters. I note in your letter that you state this formal request was made by a member of your department on December 1, 1958, of Mrs. Winnice P. Clement, Registrar of Voters, for permission to inspect the registration records in her parish.

Mrs. Clement's attorney, Mr. John T. Campbell, addressed

an inquiry to me dated December 4, 1958, in which he asked for an opinion as to the authority of the Registrar to permit a representative of your office to examine the records and to photograph such documents as they desired. This inquiry was answered on December 5, 1958, in the form of a formal opinion, a copy of which I am attaching hereto and which is self-explanatory.

You will note that under Louisiana law the only person that can inspect the Registrar's records is a registered voter of the parish and further that the records can only be photographed upon written application of 25 registered voters of such parish. This opinion, as you are well aware, was written about the time that the Civil Rights Commission came into being. I have sent a copy of this opinion and all others of this office relating to Registrars of Voters, to Mr. Gordon Tiffany, Director of the Civil Rights Commission. Mr. Tiffany and his staff, I am sure, are aware of our laws because I have discussed them personally with him on several occasions.

An act of the 1958 legislature makes the Attorney General the legal representative of Registrars in this State in the conduct of any inquiry by the Federal Government into the affairs of their office. This information has also been communicated to Mr. Tiffany, who has agreed with me to contact this office concerning any rights into which that body may seek information from or concerning Registrars in this State.

347 In the early part of this year, the exact date of which I do not know, the Chief Investigator for the Civil Rights Commission, Colonel Rosenfeld, came to Louisiana and questioned the Registrar of Webster Parish, as well as the Registrar of Caddo Parish, in my presence concerning alleged discrimination in connection with voter registration. A transcript of the questions and answers was made and a copy was forwarded to Mr. Tiffany, the Director of the Civil Rights Commission. I am sure you can see this copy by contacting him.

Under the circumstances, and particularly the law of Louisiana, and specifically R.S. 18: 91, et seq., be advised that your request to inspect the registration records is denied until and

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unless you comply with the respective provisions of Louisiana law.

Very truly yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG/ea.

cc: Mr. Gordon Tiffany, Director, Civil Right Commission; Mrs. Winnice P. Clement, Registrar of Voters, Webster Parish; Honorable L. H. Padgett, District Attorney, 26th District; Mr. John T. Campbell, Attorney at Law, Minden, Louisiana.

348

STATE OF LOUISIANA,
DEPARTMENT OF JUSTICE,
Baton Rouge, December 5, 1958.

No. 31, Registrar of Voters.

Discussion of authority of F.B.I. or Federal Commission dealing with civil rights to examine or photograph records of Registrars of Voters. See R.S. 18: 91 and 92 and USCA 42: 1975, et seq.

CAMPBELL, CAMBELL & MARVIN, Esqs.,
First National Bank Building,
Minden, Louisiana.

(Attention Mr. John T. Campbell).

GENTLEMEN: Receipt is acknowledged of your letter dated December 4, 1958, in which you request our opinion of the law with relation to the following facts:

Two agents of the Federal Bureau of Investigation called at the office of a Registrar of Voters stating that Mr. W. Wilson White, Assistant to the Attorney General of the United States, has requested them to contact the Registrar of Voters and ask permission for representatives of the F.B.I. to come into the Registrar's office and examine records pertaining to registration of voters and to photograph such documents as they desired. The Registrar wishes to know whether this request should be complied with.

R.S. 18: 91 of the Revised Statutes of the State of Louisiana of 1950 in part designates records of the Registrars which are permanent records, and doubtless the records which are sought to be photographed are among those listed in Section 91.

Section 92 of the above Title 18 in part provides that all of the records referred to in Section 91 are public records and shall at all times during office hours be open to inspection by

any qualified registered voter; also in the country parishes, upon written application of 25 or more qualified registered voters of the parish, these records shall be open for copying, photographing or photostating, unless such inspection, 349 copying, photographing or photostating will seriously interfere with the registration of voters or in the performance of any duty of the Registrar imposed by law, under which circumstances provision must be made to permit such inspection under certain conditions and limited time set forth in the Section.

It is necessary to consider Louisiana law, as above set forth, with relation to any possible conflicts with any Federal law (See Civil Rights Commission and Powers, Public Law 85–315; 71 Stat. 634, U.S.C.A. 42: 1975 et seq.)

One of the powers vested in the Federal Commission is to study and collect information concerning the legal developments constituting a denial of equal protection of the laws under the Constitution (U.S.C.A. 42: 1957 c(2)). There may be other provisions of the Federal law, or directives of the Commission, pertinent to your inquiry. Suffice it to say, there does appear broad powers under the Federal law dealing with Civil Rights, which may be construed as supplanting any State law in conflict with the Federal provisions.

It may well be that in certain instances an F.B.I. agent is not a qualified voter of any particular area involved; moreover if a qualified voter, it may be impossible in certain instances to obtain written application of 25 registered voters of the parish for photographing records. Under such circumstances, these agents would be deprived of the right of inspection or photographing records under the plain terms of R.S. 18: 92. In the absence of any clearcut decisions of the Courts on the particular subject, we are reluctant to express any opinion as to legality of such refusal of inspection or photographing by F.B.I. agents, if they are clothed with full authority as may exist or which is valid, for making inspections or photographing. It is our opinion that until such time as some proper court holds unconstitutional the provisions of R.S. 18: 92, or unless some court directs to the contrary, it is our opinion that

the Registrar of Voters should adhere strictly to the provisions of R.S. 18: 92.

Sincerely yours,

(S) JACK P. F. GREMILLION,
Attorney General.

350 *Exhibit J to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 18, 1959.

The Honorable JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL: May I take this opportunity of thanking you for forwarding to me a copy of your recent letter to Mr. W. Wilson White, Assistant Attorney General, respecting his request for an examination of the registrar's records in Webster Parish.

As I have informed you in the past, there is no connection between the Department of Justice and the Commission on Civil Rights. We operate in different manners, based upon our authorizations under the law. The Commission on Civil Rights has from its inception been only a fact-finding body, charged with gathering the facts resulting from complaints which are filed by individuals and attempting to gather all the facts, whether favorable or unfavorable.

Permit me to again express my appreciation for the information which you have forwarded to me.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

351 *Exhibit K to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 13, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL: You were kind enough to send us a copy of one of your opinions relating to the disclosure of voting records. In order that our file may be complete, we would

much appreciate it if you will forward such other opinions, memoranda, instructions and other documents concerning voting and registration matters in Louisiana which may have been issued by you or your predecessors since 1950.

I was very much interested in the Governor's comments with reference to his statutory authority in the appointment of Registrars and, in general, his relationship to other officials of the state and local governments in the matter of the conduct of elections. I would be most grateful if your office could furnish me with an informal comment which would explain the practical application of the statutory authority distributed among the state and local officials from the Governor down with respect to the conduct of elections.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

Exhibit L to affidavit

352 STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
Baton Rouge, May 20, 1959.

Mr. GORDON M. TIFFANY,
Staff Director, Commission on Civil Rights,
Washington 25, D.C.

DEAR MR. TIFFANY: Receipt is acknowledged of your letter of May 13, 1959.

In order to answer the first paragraph of your letter, I am giving you below the statutory and constitutional law concerning registration of voters, registrars and the election laws:

Laws concerning registration of voters and registrars are contained in West's Revised Statutes of Louisiana, Title 18, Sections 1–223. General primary election laws are in Title 18, Sections 281–382; in municipalities having a population of less than 5000, Sections 431 and 432 cover. If candidates are in the Armed Forces, Sections 481–484 cover. General Election Laws are found in Title 18, Sections 541–781. Absentee voting is covered by Sections 102–1111 of this same title. Voting machine laws are found in Sections 1161–1196. Election contests are covered by Sections 1251–1303. National Elections are covered by Sections 1381–1431. Constitutional provisions relative to suffrage and elections are contained in the Constitution of Louisiana of 1921, Article VIII.

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Under the different Sections of the Statutes enumerated above in West's edition of the Louisiana Revised Statutes, there is shown all opinions which have been rendered by this Department, citations being given to the bound volumes of the Reports and Opinions of the Attorney General and there is also shown citations of cases which have gone to the Courts. I presume that this material available in your Libraries at Washington.

In regard to the second paragraph of your letter, the Statutes enumerated above set forth the duties of the particular officials in the respective types of elections. The actual conduct of the election itself is solely under the control of the election
353 officials who are the Commissioners, Alternate Commissioners of Watchers whose names are submitted by the candidate in a primary election and whose names in a general election are submitted by the Republican, Democratic or any other qualified political party in this State.

I trust that the above will give you the information desired. However, if I can be of further assistance, I shall be glad to have you call upon me.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:aa.

354 *Exhibit M to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington, D.C., May 13, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General of the State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: Following our recent conversation with you and your Governor, I have discussed the matter of Interrogatories with the Commission on Civil Rights, at its monthly meeting held in Chicago on Wednesday, May 6, 1959. The Commission authorized me to proceed with the preparation and forwarding of Interrogatories to you, accepting your assurance that you would cooperate fully to see that we receive the information requested.

I am, therefore, enclosing herewith sufficient Interrogatories to be answered, under oath, by the Registrars of Voters in nine-

teen (19) Parishes, the names of the Parishes being provided on the Instruction Sheet attached to the Interrogatories.

You will appreciate, I am sure, the usual circumstances of an Interrogatory especially when it may be used as an alternative to a full and complete examination upon a hearing. There can be no doubt that these questions are comprehensive, to say the least. Nevertheless, we are still in agreement that if a full dress hearing may be avoided by the use of the Interrogatories it is definitely preferable. It is not the desire of the Commission to hold hearings simply for the sake of holding hearings but only insofar as they are necessary to secure the facts.

There were two conditions which the Commission imposed in connection with taking Interrogatories; first, that said Interrogatories should be returned to this office not later than two weeks from the day they were received by your office; and, second, that the Commission will still be free to holding a hearing if, in its judgment, such additional action is necessary to secure the information which it needs to carry out its statutory duties.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

355 *Exhibit N to affidavit*

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
Baton Rouge, May 28, 1959.

Mr. GORDON M. TIFFANY,
Staff Director, Commission on Civil Rights,
Washington 25, D.C.

DEAR MR. TIFFANY: Reference is made to your letter of May 13, 1959, addressed to me to which is attached 315 questions submitted under authority of the Commission on Civil Rights for answer under oath and signed by each Registrar of Voters in nineteen parishes of the State of Louisiana.

On May 20, 1959, the Registrars of Voters in the parishes involved were furnished these questions for study, and sixteen of them met with me on May 26, 1959. I conferred with these Registrars of Voters pursuant to Act 482 of 1958 of the Louisiana Legislature which in part requires that I give them legal advice. I was instructed by all of the Registrars at the above referred to meeting to advise you that they would not answer

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these questions for the principal reasons that a great number of them are wholly unrelated to the functions of their offices, and they are not accompanied by any specific complaints, the nature thereof, nor the name of any complainant. However, I was further instructed to advise you, that these Registrars have no objections to the answering of any pertinent questions relating to specific complaints by a named complainant, and in this connection to cooperate fully in the development of such facts.

In your letter to me of May 13, 1959, you infer that these interrogatories, if answered fully, are based upon my assurance that I would cooperate fully to see that you would receive the information requested; moreover, there is agreement that if a full dress hearing may be avoided by the use of interrogatories it is definitely preferable. Finally you state that the Commission will still be free to hold a hearing if, in its judgment, such additional action is necessary to secure the information which it needs to carry out its statutory duties.

So far as I am concerned, I still adhere to my commitment to be cooperative, but frankly my appreciation of our understanding was that if your Commission had specific complaints you would furnish interrogatories covering each specific complaint and that the use of interrogatories would obviate any necessity for holding hearings.

Since the same 315 questions are submitted to all of the Registrars of the parishes involved, and not a single question is identifiable with any specific complaint, it is obvious that my understanding about the interrogatories has not been complied with, in this respect. Again, it is inconceivable
356 to me that the Commission would find as pertinent certain of the questions which in some instances have nothing to do with the duties of the Registrars as provided by law (e.g., certain questions dealing with absentee voting, or personal beliefs as regards the NAACP No. 97, or personal beliefs as regards out of parish or state persons previously registered, No. 266, 267, and 268, or personal beliefs with regard to educational or property qualifications Nos. 311 and 312, or any other personal beliefs). There are other questions propounded which a Registrar would not likely be able to answer, as for example question No. 13 which refers to the name of a person who appoints a Registrar in the country parishes of the state, in the face of the law which provides for such an appointment

generally by a police jury, composed of a body of men of a number determined by the population of a parish.

It would be difficult to estimate the great length of time required for any Registrar to make all of the research necessary for answering such of the 315 questions which could be answered, and particularly those applicable to terms of office preceding the terms of the present incumbents, or since 1955. It was not my intention to acquiesce in any plan or procedure by way of interrogatories, which would involve such irrelevant matters as are contained in these interrogatories, and particularly where such burdens and hardships would be put upon the Registrars.

Finally, your attention is called to a newspaper clipping appearing in the New Orleans States and Item, of May 19, 1959, from which I quote as follows:

"By Sam A. Hanna

"WASHINGTON.—The Civil Rights commission has reported a spurt of voting rights complaints from Louisiana and is still considering holding a full-scale investigation of them."

"The commission said it received 95 complaints from Louisianians who claimed interference with their voting privilege since the agency began operation in 1957. Sixty-four of these were sent last Feb. 16."

* * * * *

"From other sources, it was learned that the commission discussed holding a public hearing in Northern Louisiana when it met in Atlanta last month, but instead decided to postpone action until its May meeting."

"In the meantime, Tiffany conferred with Louisiana officials in Baton Rouge concerning Louisiana law that closes certain election records except to local residents who petition to see them. Tiffany is known to have reported back to the
357 commission, meeting in Chicago May 6, that he had no success but the commission resolved to try another but so far unspecified approach to collect the information."

"Any decision to hold an investigation has thus been postponed until the commission's next meeting, in Los Angeles in mid-June. * * *"

If the Commission will still insist upon a hearing despite the interrogatories, as seems likely from the above, there does not appear much use in going to all of the trouble and inconven-

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ience involved in attempting to answer so many interrogatories which appear to me so irrelevant. Perhaps other interrogatories could be confected which the Registrars could or would be willing to attempt to answer, and in this connection I should be pleased to hear from you.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:aa.

358 *Exhibit "O" to affidavit*

P WXM059 LONG GOVT DL PD—TX WASHINGTON DC 29 259PME—
THE HON JACK P. F. GREMILLION, ATTY GENERAL OF LOUISIANA—DEPT OF JUSTICE BATON ROUGE LA—1959 MAY 29 PM 2 36

ACKNOWLEDGING YOUR LETTER OF MAY 28, YOU COMMENT THAT CERTAIN QUESTIONS IN THE INTERROGATORY ARE OBJECTIONABLE BECAUSE IMMATERIAL AND IRRELEVANT, THAT OTHERS ARE CONTRARY IN LAW. AS COUNSEL TO THE REGISTRARS AND FOR THE PURPOSE OF THIS INTERROGATORY SUCH OBJECTIONS MAY BE NOTED BY YOU IN THE REPLY. QUESTIONS OF MATERIALITY, RELEVANCY AND OTHER OBJECTIONS WILL BE CONSIDERED ALONG WITH THE COMPLETED ANSWERS BY THE COMMISSION IN DETERMINING THE NECESSITY OF A HEARING. THE INTERROGATORIES COVER SPECIFIC ALLEGATIONS OF THE COMPLAINTS RECEIVED BY THIS COMMISSION. SUCH ADDITIONAL QUESTIONS AS APPEAR IN THESE INQUIRIES ARE SUBMITTED BY THE STAFF OF THE COMMISSION AS RELEVANT TO OUR STATUTORY DUTIES.

AT NO TIME HAS THE COMMISSION AGREED TO FURNISH THE SPECIFIC COMPLAINTS OR INFORMATION WHICH DIRECTLY OR INDIRECTLY WOULD DISCLOSE THE IDENTITY OF COMPLAINANTS. IN THIS REGARD WE CALL YOUR ATTENTION TO THE ACTION OF THE COMMISSION AS NOTED IN MY LETTER OF APRIL 14TH, ADDRESSED TO ATTORNEY WILLIAM SHAW, A COURTESY COPY OF WHICH WAS ADDRESSED TO YOU.

WE APPRECIATE YOUR CONTINUED COOPERATION AND WE TRUST THAT THE COMPLETED INTERROGATORIES WILL BE RECEIVED IN THIS OFFICE BY JUNE 5. SINCERELY,

GORDON M. TIFFANY, STAFF DIRECTOR.

359 *Exhibit P to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., May 29, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: This will acknowledge receipt of your letter of May 20, 1959 and will confirm our wire which was sent in reply to your letter of May 28.

Thank you for the citations which will be helpful. Our inquiry was to make certain that we had all pertinent unpublished rulings. Am I correct in assuming, on the basis of your letter, that there is no publication issued by your office (or perhaps another State office) which enumerates laws, rulings and instructions for distribution to and use of the local registrars?

As to the interrogatories, we trust we will receive the replies on or before June 5. This will give us time to refer the results to the Commission for its consideration and report.

Sincerely,

(S) GORDON M. TIFFANY,
Staff Director.

360 *Exhibit Q to affidavit*

JUNE 2, 1959.

Honorable GORDON M. TIFFANY,
Director, Civil Rights Commission,
Washington, D.C.

DEAR MR. TIFFANY: Your telegram of May 29, 1959 was received in my Baton Rouge office during my absence from the city, and I have had no opportunity of answering until today.

I regret that you have not acquiesced in my suggestions of May 28, with particular reference to new questions accom-

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panied by specific complaints, as well as the names of the complainants, but instead you suggest the noting of objections and completion of the answers by June 5. If the form or subject matter of these questions were otherwise not objectionable, the time necessary therefor, would in my opinion, extend far beyond June 5. However, as stated in my letter of May 28, sixteen of those Registrars gave me the instructions which I passed on to you, and I have no alternative but to request your reconsideration of my May 28 letter.

I cannot conceive of any valid reason why these Registrars should not be furnished with the nature and cause of complaints or the accusations made against them. Of course, in criminal prosecutions an accused is entitled to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor (see: Amendment VI Constitution). Also, of course, no person shall be compelled in any criminal case to be a witness against himself (Amendment V Constitution). If the complainants contend a denial of the equal protection of the laws (Amendment XIV) or a denial of a right to vote (Amendment XV), it seems logical to assume that orderly process would require such complainants to come forward, with specific complaints so that the Registrars would have an opportunity of joining issue. If, in the submission of these 315 questions in their present form, the Commission is attempting to assume prerogatives that are usually those of a grand jury, it would then appear that some provision would be taken into account relative to immmunity from prosecution. I have been given to understand that these Registrars have nothing to hide, but at the same time it may well be that they would be very apprehensive of the results of such a severe examination as is proposed by these 315 questions, without knowing what the complaints are. It is not likely that the Commission, even though inadvertently, would not
361 recognize State laws as valid as regards registration and voting until upset by the Courts, under rights reserved to the States (Amendment X Constitution).

I have tried to point out to you that these Registrars feel that they are being imposed upon unnecessarily, and I fail to see why such a burden should be placed upon them as to require them to attempt an answer to these numerous questions, many of which seem clearly to be immaterial.

I sincerely hope that you will reexamine this matter, and then adhere to the suggestions contained in my letter of May 28, 1959.

Sincerely yours,

JACK P. F. GREMILLION,
Attorney General.

JPFG:mal.

362 *Exhibit R to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., June 4, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: Thank you for your letter of June 2, 1959 in answer to the telegram sent you by this office on May 29, 1959.

I feel that any reexamination of your position on the interrogatories is now at a point which requires a policy decision by the members of this Commission. Therefore, I shall place the matter as it stands before the Commissioners at their next meeting. Any further proceedings in this situation will, of course, be guided by their decision.

Sincerely yours,

(S) GORDON M. TIFFANY.

363 *Exhibit S to affidavit*

COMMISSION ON CIVIL RIGHTS,
(STAFF DIRECTOR),
Washington 25, D.C., June 11, 1959.

The Honorable JACK P. F. GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: This will advise you that the Commission, at its official meeting held here yesterday, June 10, 1959, authorized a hearing on Louisiana voting complaints pursuant to Sec. 105(f) of the Civil Rights Act of 1957, 71

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Stat. 634. The hearing is scheduled to be held on July 13, 1959 in Shreveport, Louisiana.

Sincerely yours,

GORDON M. TIFFANY,
Staff Director.

364 *Exhibit T to affidavit*

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., July 8, 1959.

Honorable JACK GREMILLION,
The Attorney General,
State of Louisiana,
Baton Rouge, Louisiana.

DEAR GENERAL GREMILLION: As you are aware, the Civil Rights Commission is holding a Hearing on Voting in Shreveport on 13 July 1959 and we would be pleased to have you attend.

For your information we are enclosing a copy of "Rules of Procedure" and also a copy of Public Law 85–315, 85th Congress, which established this Commission. In this connection, your attention is invited to Sec. 102(h) which states, "In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings."

We are looking forward to visiting Shreveport and to a Hearing that will be beneficial to all concerned.

Sincerely yours,

(S) GORDON M. TIFFANY.

Recd: 7–13–59.
Enclosures, 2.

373 In U.S. District Court Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General)
Baton Rouge, August 3, 1959.

In re Larche, et al. v. Hannah, No. 7479.

CLERK, U.S. DISTRICT COURT,
Post Office Building,
Shreveport, Louisiana.

DEAR SIR: There are enclosed herewith, in triplicate, affidavits from the following complainants:

Pauline A. Culpepper, Bienville Parish
J. Walton Crawford, Red River Parish
B. W. Berry, Tensas Parish
Winnice P. Clement, Webster Parish
Cecil E. Manning, East Carroll Parish
Estelle Wilder, Jackson Parish.

Yours very truly,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC:eak
encls.
ccs: Mr. William Shaw, P.O. Box 450, Homer, Louisiana; Mr. Fitzhugh Wilson, U.S. Attorney, Post Office Building, Shreveport, Louisiana.

374 *Affidavit*

Filed August 5, 1959

STATE OF LOUISIANA,
Parish of Bienville (ss):

[File endorsement omitted.]

Before me, the undersigned authority, personally came and appeared Pauline A. Culpepper, known to me, who being first duly sworn did depose and say:

That your affiant is the duly appointed, qualified, and acting Registrar of Voters of the Parish of Bienville, State of Louisiana; that affiant is one of the complainants in the case entitled Mrs. Margaret M. Larche, et al. v. John A. Hannah, et al., Civil Action No. 7479, United States District Court, West-

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ern District of Louisiana, Shreveport Division; that your affiant was served with a subpoena issued by Honorable John A. Hannah, Chairman of the Commission on Civil Rights ordering your affiant to appear and testify and as well produce all of the official records of the office of the Registrar of Voters, Parish of Bienville at a hearing to be held July 13, 1959, at the United States courtroom, Shreveport, Louisiana, located in the Parish of Caddo; that for the reasons as outlined in the petition and pleadings filed in the said cause, your affiant suffers and will continue to suffer irreparable injury; that affiant is informed that the Commission on Civil Rights has a complaint or complaints against affiant accusing affiant of having deprived certain United States citizens whose names are unknown to your petitioner of their right to vote or to have their vote counted because of their color, race, religion, or national origin; that a questionnaire prepared by the Commission on Civil Rights was received by affiant which has not been answered; that affiant's legal counsel in this matter appointed by law is Attorney General, Jack P. F. Gremillion, whose advice and counsel has been relied upon and followed; that affiant has never been furnished by the Commission on Civil Rights nor by anyone with the names of affiant's accusers or the nature and cause of the accusation made against affiant before the Commission on Civil Rights.

PAULINE A. CULPEPPER.

Sworn to and subscribed before me this 1st day of August, 1959.

H. RUPERT SLEDGE,
H. Rupert Sledge,

Clerk of Court in and for the Parish of Bienville, Louisiana and Ex-Officio a Notary Public.

Clerk's note

Similar affidavits executed by J. Walton Crawford, B. W. Berry, Winnice P. Clement, Cecil E. Manning and Estelle Wilder, appearing on pages 374 through 379 inclusive are omitted in printing.

380 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL. IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA, COMPLAINANTS

v.

JOHN A. HANNAH, ET AL. INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS, DEFENDANTS

[File endorsement omitted.]

Stipulation in and Between Complainants and Defendants

Filed August 7, 1959

1

Complainants, Mrs. Margaret M. Larche, Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Sidney W. Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry Earl Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell, are citizens of the United States and the State of Louisiana, taxpayers, qualified voters, and Registrars of Voters in and for their respective parishes of the State of Louisiana.

2

Defendants: John A. Hannah, a resident of East Lansing, Michigan; Robert C. Storey, a resident of Dallas, Texas; John S. Battle, a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, a resident of South Bend, Indiana; Doyle E. Carlton, a resident of Tampa, Florida; and George M. Johnson, a resident of the State of California, presently residing in Washington, D.C., are citizens of the United States and, as well, members of the Commission on Civil Rights.

381 3

The Attorney General of Louisiana, Honorable Jack P. F. Gremillion, is legal counsel designated by the legislature for all

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Registrars of Voters of the State of Louisiana, and the other counsel of record are attorneys for the complainants respectively in their individual capacities.

4

Honorable Gordon M. Tiffany is the duly appointed Staff Director for the Commission on Civil Rights and has acted in this matter by virtue of such authority and under the authority of the Commission on Civil Rights.

5

The Commission on Civil Rights received sixty-seven (67) written allegations prior to February 27, 1959, under oath or affirmation, from certain citizens of the United States alleging they were citizens of the State of Louisiana and that they had been deprived of their right to vote because of their color, race, religion, or national origin, and that these were received sometime prior to February 27, 1959, a number of which alleged generally that the plaintiffs in suit, through their acts and deeds, had caused such deprivation.

6

That after the Commission on Civil Rights received these complaints, investigators of the Commission were sent to the State of Louisiana and investigated the same.

7

The Commission, through its Staff Director, Gordon M. Tiffany, had conferences with Attorney General Jack P. F. Gremillion, concerning the possibility of submitting questionnaires to Registrars of Voters in lieu of a hearing. Prior thereto, attorney W. M. Shaw, on behalf of his client,
382 Mrs. Lannie L. Linton, addressed a letter to the Commission dated March 14, 1959 (copy attached), which was replied to by the Commission under date of April 14, 1959, signed by Director, Tiffany (copy attached), and that the resolution of the Commission quoted in said letter of April 14th was duly passed by the Commission and represents its official action.

8

Thereafter, Director Tiffany furnished to each of the Registrars and to Attorney General Jack P. F. Gremillion a questionnaire (copy attached). After conference with the Registrars of Voters, Attorney General Gremillion addressed a letter to Director Tiffany dated May 28, 1959 (copy attached) to which Director Tiffany replied on May 29, 1959 by telegram (copy attached), which was replied to by Attorney General Gremillion on June 2, 1959 (copy attached). Following this communication, a letter dated June 4, 1959 (copy attached) from Gordon M. Tiffany to Attorney General Gremillion was received.

9

That the Commission on Civil Rights at an official meeting held in Washington D.C., on June 10, 1959, authorized a hearing on Louisiana voting complaints, pursuant to Section 105 f of the Civil Rights Act of 1957, 71 Stat. 634. The hearing was scheduled to be held on July 13, 1959 in Shreveport, Louisiana.

10

Thereafter the Commission duly issued subpoenas in connection with the aforesaid hearing of July 13, 1959 and caused said subpoenas to be served on plaintiffs in suit No. 7479 by the United States Marshal. Subpoenas were also served by said Marshal on the plaintiffs in suit No. 7480 on the docket of this Court. The remainder of the said subpoenas were served through the Commission's own process. The total number of subpoenas caused to be issued by the Commission numbered approximately sixty (60). True and accurate copies of
383 the subpoenas served on the plaintiffs in the two respective suits are attached to said petitions, the originals of which were all served prior to July 9, 1959. Attached to these subpoenas was a copy of the official Rules Of Procedure For Hearings of the Commission on Civil Rights as well as a copy of the said Civil Rights Act, and each plaintiff was tendered mileage and per diem in accordance with the said Act.

11

Exhibits A through T inclusive, attached to and made a part of the affidavit filed herein by Jack P. F. Gremillion,

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Attorney General of the State of Louisiana, are true and accurate copies of the originals of said copies, provided, however, that defendants reserve the right to make objections to the relevancy and materiality thereof.

Jack P. F. Gremillion,
JACK P. F. GREMILLION,
Attorney General of the State of Louisiana,
Attorney for Complainants.

W. Wilson White,
W. WILSON WHITE,
Assistant Attorney General of the United States,

T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney, Western District of Louisiana,
Attorneys for Defendants.

384 [Letter dated March 14, 1959, omitted. Printed side page 340 supra.]

385 [Letter dated April 14, 1959, omitted. Printed side page 344 supra.]

386 *Attachment to stipulation*

COMMISSION ON CIVIL RIGHTS

WASHINGTON, D.C.

INSTRUCTIONS ACCOMPANYING INTERROGATORIES

The attached questions should be answered by Registrars in each of the following parishes:

Bienville
Bossier
Caddo
Caldwell
Claiborne
Concordia
De Soto
East Carroll
Iberia
Jackson
Madison
Morehouse
Ouachita
Rapides
Red River
Richland
Tensas
Webster
West Feliciana

533716—59——12

Answers should be numbered to correspond with question numbers.

Two copies of the questions are furnished herewith for each Registrar. One copy should be returned by each Registrar along with his answers. The other copy may be retained by the Registrar in each case.

Extra copies are attached for the files of the Attorney General.

Answers must be under oath, and must be signed by each Registrar as a sworn statement.

Within two weeks from date of receipt by Louisiana Attorney General answers must be returned to the following address:

Commission on Civil Rights,
726 Jackson Place, N.W.,
Washington 25, D.C.
Attention: Voting study team.
Attachments.

387 QUESTIONS FOR REGISTRARS

1. Please state your name, age, date of birth and place of residence?
2. How long has this been your residence?
3. Where did you previously reside?
4. What is your present occupation?
5. What other positions or jobs have you held?
6. How long for each?
7. What are your educational qualifications?
8. Under the law of Louisiana, what educational qualifications do you understand are necessary for the office of Registrar?
9. Are you a lawyer?
10. How long have you been a Registrar?
11. Were you ever a Registrar in this or any other Parish before?
12. Who appointed you to office (for each applicable term)?
13. How long did you know Mr. ———— (name of appointing official) before he appointed you?
14. What was the nature of your acquaintance?
15. Did anyone else recommend your name to him?
16. Is so, who?

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17. How long have you known such recommending person?
18. What was the nature of your acquaintance with him?
19. In your own opinion, why do you believe you were appointed?
20. What are the qualifications for the position of Registrar?
21. Are you a qualified elector of your Parish?
22. How long have you been a qualified elector?
23. When were you first registered to vote in your Parish?
24. When were you last registered?
25. Were you ever required to re-identify yourself for purposes of registration?

388 26. What is your term of office as a Registrar?

27. When you took office, did you have to take an oath?
28. What was the nature of that oath?
29. What conduct was required of you as a Registrar under the terms of that oath?
30. Is it your understanding that the oath you took is a "public record" under the law of Louisiana?
31. Do you have any objection to this Commission or duly authorized members of its staff inspecting your oath, or any other written matters compiled by you, as a Registrar, which are "public records"?
32. How are you paid for your work as a Registrar?
33. How much?
34. Is there any limit upon the total amount you can receive during any period of time?
35. How much money did you receive for your services as a Registrar this year?
36. In 1958?
37. In 1957?
38. In 1956?
39. (If applicable.) In previous years?
40. Did you receive any sum or sums of money from the State of Louisiana for any services other than those in connection with your work as Registrar in any of the years involved?
41. Have you ever neglected, refused, or been unable to serve since your appointment to office?
42. If so, for what reasons?
43. Are you now a Registrar of your Parish?

44. How often have you been available to take applications for registration this year?

45. Where?

46. In 1958?

47. In 1957?

389 48. In 1956?

49. What hours have you kept the place of registration open on these occasions?

50. How many hours each day?

51. Since 1955, how many people came to make application—white and Negro?

52. Since 1955, how many applications did you receive—white and Negro?

53. Since 1955, how many people—white and Negro—were turned away without an opportunity to submit applications?

54. Why were they turned away? Explain.

55. Since 1955, how many applications by white persons were approved for registration?

56. Since 1955, how many applications by Negro persons were approved for registration?

57. Since 1955, how many registration certificates were issued to white persons?

58. Since 1955, how many registration certificates were issued to Negroes?

59. Since 1955, if there is a discrepancy between applications approved and certificates issued, how do you account for the discrepancy?

60. Do you use separate facilities for registration of white persons and Negroes?

61. Are the rooms and facilities physically substantially the same?

62. Do you have any regulations or practices governing the number of people who may complete application forms at the same time?

63. Are these the same for white and Negro applicants?

64. Do you have regulations or practices which restrict the number of individuals admissible in the registration room or rooms?

65. Are these the same for white and Negro applicants?

66. Please state the qualifications for registration under Louisiana law.

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67. How do you determine whether an applicant for registration is "of good character"?

68. Do you use the same test of good character for both white and Negro applicants?

390 69. How do you tell whether or not an applicant "understands the duties and obligations of citizenship under a republican form of government"?

70. Do you use the same tests for those matters for both white and Negro applicants?

71. Do you believe that Negroes generally are as likely as whites to be qualified?

72. Do you require white applicants to complete a registration form?

73. Do you require Negro applicants to complete a registration form?

74. Do you use the same application form for both whites and Negroes?

75. Is the information required to be given under oath?

76. Do you ask preliminary or supplemental oral questions of white applicants?

77. Do you ask preliminary or supplemental oral questions of Negro applicants?

78. What questions do you ask?

79. By what authority do you ask such questions?

80. If you ask preliminary questions, have you ever refused to give an applicant a form because of the way such preliminary questions were answered?

81. If you ask supplemental questions, have you ever rejected an application because of the way such supplemental questions were answered?

82. By what authority did you refuse the applicant a form or reject the applicant?

83. Do you believe that the use of an application form is necessary?

884. Is it required by law for all applicants—both white and Negro?

85. Do you regularly require the applicant to take an oath?

86. What oath and why?

87. Are the application forms a part of the official records of the Registrar?

88. Do you help applicants complete their forms?

89. Under what circumstances do you help applicants?

90. Do you give such help to both white and Negro applicants?

391 91. Do you apply the same standards of good character to an individual who cannot read or write as you apply to one who can read or write?

92. How do you determine the reputation of an applicant who cannot read or write?

93. If an applicant cannot read or write, what do you do to ascertain whether or not he is attached to principles of the State and Federal Constitutions?

94. Do you have rules and regulations indicating the "type of attachment" that is needed to qualify such applicant?

95. Do you believe that people who cannot read or write should be allowed to register?

96. Under what circumstances should people who cannot read or write be allowed to register?

97. If an applicant who cannot read or write is a member of the NAACP, can he be registered as an individual who is well disposed to the good order and happiness of the State of Louisiana and the United States?

98. What tests do you apply to determine whether an individual who cannot read or write is well disposed to the good order and happiness of the State of Louisiana and the United States?

99. What provision or provisions of the Louisiana Constitution and the United States Constitution do you use in order to test an applicant's ability to read and reasonably interpret?

100. Have you used the same provisions more than once?

101. What are the sections of the Louisiana Constitution that you normally use?

102. What are the sections of the United States Constitution that you normally use?

103. Do you use the same sections for both Negro and white applicants?

104. Is a standard interpretation of these provisions furnished you by any State or Parish official?

105. Is a standard interpretation of these provisions furnished you by person or persons in a non-official capacity?

106. If answer is yes, please identify person, persons or organizations furnishing such information or interpretation.

392 107. If no individual or group, official or non-official, furnishes any information regarding interpretation of

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these provisions, what are the standards you apply to determine whether an applicant has given a reasonable interpretation?

108. Upon what sources do you rely for evaluating the adequacy of an interpretation given by an applicant?

109. Have you had any formal education on constitutional or statutory interpretation?

110. If so, when, where and what?

111. By what means do you determine the identity of an applicant?

112. What proof or proofs of identity do you require?

113. Do you require confirmation of identity?

114. What form of confirmation of identity do you require?

115. Do you use the same means of satisfactory proof of identity for both Negro and white applicants?

116. What form of proof of residence within the State and Parish do you require of applicants?

117. If more than one type of proof is satisfactory to you, please list and describe the several types of satisfactory proof of residence in the State and Parish.

118. Since 1955, have you on your own motion ever taken action to remove the name of any previously qualified voter from the official voting list of your Parish?

119. Upon what grounds did you take such action? (If in more than one instance there were separate and different grounds, please identify the grounds in each case.)

120. What form of notice, if any, was given to the previously qualified voters?

121. Since 1955, list the name and race of each previously qualified voter removed from the official voting list as the result of your action.

122. Since 1955, list the name and race of each previously qualified voter who satisfactorily established the propriety of his registration following your action to strike his name from the rolls.

123. Since 1955, list the name and race of each previously qualified voter, the propriety of whose registration has been challenged by two registered voters of the Parish.

393 124. In each instance, give the date of such challenge by affidavit, the reason, if any, for such challenge, the ward and precinct of such previously qualified voters, and the names of the affiant challengers.

125. In each instance, what notice was given to the previously qualified voter whose registration was so challenged by the affidavit of two registered voters?

126. In each instance, was the previously qualified voter able to make satisfactory proof of the propriety of his registration?

127. List the names, race, and date of striking of each previously qualified voter whose registration has been stricken since 1955.

128. Has any qualified voter in your Parish had his name stricken since 1955 as the result of a proceeding filed in the District Court of your Parish?

129. List the name and race of each such previously qualified voter whose registration was so stricken as the result of suit filed in the District Court of your Parish.

130. In each instance, list the name and race of the qualified voter bringing the particular proceeding in the District Court of your Parish.

131. Give the dates when such cases were docketed in the District Court, the docket numbers, and the dates when the cases were heard.

132. In any of the cases listed, where the jury determined that the challenged voter was qualified, did the party applying appeal?

133. In any of the above cases, if the previously registered voter was stricken by action of the jury, did such party take appeal?

134. What was the result of this appeal?

135. Has any individual stricken by vote of the jury subsequently been indicted for illegal or fraudulent registration or any other crime against the State of Louisiana, such as perjury?

136. Give the names of individuals so indicted, along with the disposition of the individual cases.

137. In any of these criminal cases, was the challenging elector a witness against the defendant?

138. Is there provision for absentee voting in your Parish?

139. Who is responsible for administering absentee voting?

394 140. Since 1955, how many Negroes and how many whites have voted through absentee provisions?

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141. On the absentee forms in which the voter indicates his choice, is there a requirement that the race of the voter be indicated?

142. What form or forms of proof of citizenship and age do you normally require of an applicant?

143. If more than one form of evidence of citizenship and age is satisfactory to you, please list the various forms.

144. Does the State Board of Health furnish periodic listings of persons in your Parish who have died?

145. Do you remove all names so furnished from the registration lists?

146. If an individual is removed from the registration list by error, is that person required to re-register?

147. Do you remove names so received from the State Board of Health on your own motion and without notice to the families of the individuals involved?

148. Do charitable institutions furnish lists to you showing the admission of inmates?

149. Upon receipt of such names, do you automatically erase them from the registration lists?

150. Do you first ascertain the exact nature of the admission into the charitable institutions?

151. Have you ever made demand of apartment, hotel, lodging, rooming, or boarding house operator that he furnish you a list of the occupants over the age of 21 who have resided continuously for 3 months in such quarters?

152. What use did you make of such a list?

153. Do charitable institutions furnish lists to you showing the discharge of inmates from such institutions?

154. What use is made of such a list?

155. Are individuals discharged from such institutions reinstated automatically to the registration lists.

156. On what date do you canvass the names on the precinct register?

157. Should you decide during such canvassing to remove an individual alleged to be illegally or fraudulently on the lists, do you give notice to such individual?

395 158. What constitutes illegal registration?

159. What constitutes fraudulent registration?

160. How do you arrive at such determinations?

161. What procedure do you establish to reach your conclusions to remove such individual from the registration list?

162. Since 1955, furnish the names and race of all persons removed in each annual canvass.

163. When white persons present themselves as applicants for registration, do you normally ask them whether they have ever been registered as a voter in your Parish or any other Parish in the State of Louisiana at any previous time?

164. When Negro persons present themselves as applicants for registration, do you normally ask them whether they have ever been registered as a voter in your Parish or any other Parish in the State of Louisiana at any previous time?

165. What are the specific records you maintain in your office?

166. After furnishing the name and a short description of each of the records within your custody, state the title and the name of the individual responsible for the accurate compilation of the information contained in this record.

167. After furnishing the name and a short description of each of the records within your custody, state the title and the name of the individual responsible for the accurate maintaining and preserving the record.

168. Who is responsible for compiling the detailed registration statistics to be filed with the Secretary of State?

169. How often are such statistics furnished to the Secretary of State?

170. Do the statistics contain a breakdown between Negro and white registrants?

171. Are these statistics available for each Parish or each precinct separately?

172. Does the master file you maintain contain anything other than the original registration applications?

173. Is this file retained in your office at all times?

174. Is this file a public record?

175. What is the nature of the precinct register file?

396 176. What is the nature and purpose of the duplicate register file?

177. Who compiles and maintains them?

178. What is the nature and purpose of the closed and disqualified file?

179. Who is responsible for compiling and maintaining it?

180. Is this a public file?

181. Are such files maintained for each precinct or for each Parish?

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182. What records reflect any challenges by qualified voters who have failed to vote for two years of registrants belonging to parties regularly holding primaries?

183. How many individuals have you so challenged in each year since 1955?

184. How many in each year were white and how many in each year were Negro?

185. How many of those challenged were able to satisfy you of their identity and remain registered?

186. How many registrants have you challenged who have failed to vote for four years?

187. How many of these were white and how many were Negro?

188. How many of the registrants challenged were re-instated?

189. How many of those re-instated were white and how many were Negro?

190. Since 1955, have you ever been called upon to consider more than one case of a registered voter whose registration has been challenged, either by yourself or by two registered voters of your Parish, on a single working day?

191. If so, what dates did this occur and what was the total number of challenged registrants appearing before you on each such date?

192. How many of such challenged registrants did you and/or your deputies interview and process on such dates?

193. How many were white and how many were Negro?

194. How many, each white and Negro, were kept on the rolls despite the challenge?

195. How many registered women who have married or re-married have you removed from the registration list?

196. How many were white and how many were Negro?

197. Have you cancelled anyone's registration who has changed his or her name by court order?

397 198. How many were white and how many were Negro?

199. Of the registered women who married or re-married and those who changed their name by court order, how many have you re-registered?

200. How many were unable to become registered voters after having been cancelled for the above reasons?

201. Of this number, how many were white and how many were Negro?

202. Since 1955 has there been any court order issued to you seeking to remove from your custody the public registration and voting records of your office?

203. What was the nature of such order?

204. Did it involve administrative investigation of voting in your Parish?

205. Did it arise as a result of litigation instituted by white persons or Negroes?

206. As a result of the above specified orders, were any registration and voting records removed from your custody?

207. If so, indicate the dates when removed and when returned and in whose custody they were entrusted.

208. During your term of office, have the records ever been out of your custody under any circumstances other than a court order?

209. If so, explain in full detail, giving dates, names of persons to whom entrusted, and place where kept while not in your custody.

210. Are any of the public records of your office out of your custody at the present time?

211. If so, explain fully giving the circumstances, reasons, identification of persons in whose custody they are, and their location.

212. Has there ever been an investigation respecting the performance of your official duties by any State official?

213. Has there ever been an investigation respecting the performance of your official duties by any Federal official?

214. If the answer to either of the above questions is in the affirmative, furnish details and give the dates, the names of the investigating officials, and titles, and the outcome of such investigation.

215. What procedures do you follow to determine whether persons are ineligible to register by reason of desertion or dishonorable discharge from the military services?

216. Do you require both Negro and white applicants for registration to read and/or write one or more provisions of the United States Constitution?

217. By what authority do you so require?

218. Are the written copies of provisions of the Constitution (if used) a part of the official records of the Registrar?

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398 219. What do you do with completed application forms?

220. What do you do with the copies of the Constitution as written by applicants?

221. Where are these papers kept?

222. Who is their custodian?

223. By what authority?

224. Do you keep application forms of both applicants who are issued certificates of registration and those who are refused?

225. (If not.) Under what authority?

226. What rules and regulations promulgated by you or previous Registrars in your Parish are now in effect to aid you in passing upon qualifications of applicants?

227. Where are these rules and regulations kept?

228. Are they a part of the "public records" of your office?

229. Are they now or have they ever been published in any newspaper or place of general notice?

230. (If so.) How frequently is publication repeated?

231. Under what authority are vouchers required?

232. Must a white applicant for registration be accompanied by a voucher or vouchers?

233. Must a Negro applicant for registration be accompanied by a voucher or vouchers?

234. Must a voucher himself be a qualified elector?

235. Is this true both for white and Negro applicants?

236. What records do you maintain concerning vouchers?

237. Is there any limitation on the number of times one person may act as voucher for an applicant?

238. Is there any limitation on the number of applicants for whom one person may vouch?

239. When an applicant is vouched for by a voucher but the applicant is denied registration, does this count as a time of vouching?

240. May a white voucher vouch for a Negro applicant?

399 241. In how many instances have Negro applicants been accompanied and vouched for by white vouchers?

242. May a Negro serve as a voucher for a white applicant?

243. Has that occurred in your period in office?

244. Do you as Registrar of your Parish require that a voucher himself be a qualified elector?

245. Do you examine these persons who appear as vouchers, either orally or in writing?

246. What questions are asked?

247. Is the examination under oath?

248. Do you require that the voucher be personally acquainted with the applicant—both white and Negro?

249. Must the acquaintance be of any particular kind, or for any particular period of time?

250. What procedures do you have for reconsideration of applications?

251. Do you reconsider both rejected and approved applications?

252. What method do you use to notify an applicant that registration has been granted?

253. What method do you use to notify an applicant that registration has been refused?

254. Were there ever any proceedings filed against you as Registrar in the Federal courts?

255. How many of such proceedings were successful against you?

256. In each case, did you subsequently issue a Certificate of Registration?

257. During the period in which you were a resident of your Parish, and in view of the fact of your interest in local government and politics, can you tell us of appeals filed from previous denials of registration by the Registrars in your Parish before you took office?

258. (If so.) How many such appeals were filed in the proper courts?

259. Were there any proceedings filed against predecessor Registrars in the United States Courts?

260. How many of such proceedings were successful against such Registrars?

400 261. Were Certificates of Registration issued at the conclusion of such successful litigation?

262. What practice do you follow when an applicant for registration in your Parish presents a Certificate of Registration from another Parish in the State of Louisiana?

263. Do you follow this procedure as to both white and Negro applicants?

264. What is your practice when an applicant produces proof that he was registered to vote in a State other than Louisiana?

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265. Is this practice followed as to both white and Negro applicants?

266. Do you believe it is proper to deny registration to an applicant in your Parish who has previously been registered in another Parish in Louisiana?

267. Do you believe it is proper to deny registration to an applicant in your Parish who has previously been registered in another State?

268. What reasons would you give therefor?

269. How often must qualified electors in your Parish re-register?

270. Is registration in your Parish permanent?

271. How are the official voting lists kept up to date?

272. Who supplies information as to deaths?

273. Who supplies the information as to disqualification by reason of mental disability?

274. Who supplies the information as to conviction of disqualifying crime?

275. How many disqualifying crimes are listed under the law of Louisiana?

276. When is the work of keeping the official lists up to date done?

277. Who does this work?

278. How many working days in any one year are spent on the work of bringing the lists up to date?

279. Where living persons are to have their names stricken from the official lists, must they be informed of such action?

280. Is this done before or after their names are stricken?

281. How are they notified?

401 282. If any such person believed you were in error about striking his or her name, what could he or she do about it?

283. Have any persons complained to you that their names should not be stricken?

284. How many whites and Negroes have complained?

285. What did you do about such complaints?

286. Were the names of such complaining persons—whites and Negroes—left on the lists or purged?

287. Why, in each instance?

288. Are there any grounds other than death, insanity, idiocy, or conviction of a disqualifying crime, for striking the name of a qualified elector from the official voting lists?

289. What are they?

290. For what reasons, during the period of your service as Registrar of your Parish have the names of qualified electors been stricken?

291. How many whites and how many Negroes from each group?

292. What is the total population of your Parish?

293. How many whites?

294. How many Negroes?

295. How many whites over 21 years of age?

296. How many Negroes over 21 years of age?

297. Do you receive information pertinent to these questions from the Registrars of vital statistics?

298. Do they have any duty to inform you as to deaths, or insanity, of persons over 21 years of age?

299. How many qualified voters in your Parish?

300. How many white persons are presently registered in your Parish?

301. How many Negroes are presently registered in your Parish?

302. How do you account for the fact that Negroes, who make up a substantial portion of the over-21 population, represent so small a proportion of the qualified electors?

303. How many Negroes have tried to register in your Parish in each year since you have been a Registrar?

402 304. How many have been registered?

305. For what reason or reasons have you decided that Negro applicants should be denied registration?

306. What, in your opinion, is the most prevalent reason?

307. Do you normally have more white or more Negro applicants for registration?

308. What reason or reasons would you assign for this?

309. Do you normally have the names of more white persons or more Negroes to consider for purging of the official voting lists?

310. What reason or reasons would you assign for this?

311. Do you believe there is any rational connection between education and the right to vote?

312. Do you believe there is any rational connection between tax-paying and voting?

313. Do you believe there is any rational connection between good behavior and voting?

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314. Do you believe there are any reasons why Negroes should be denied the right to vote which are not equally applicable to white persons?

315. (If so.) What reasons?

403 [Letter dated May 28, 1959, omitted. Printed side page 355 supra.]

406 [Telegram dated May 29, 1959, omitted. Printed side page 358 supra.]

407 [Letter dated June 2, 1959, omitted. Printed side page 360 supra.]

409 [Letter dated June 4, 1959, omitted. Printed side page 362 supra.]

412 In United States District Court, Western District of Louisiana, Shreveport Division

No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7480

J. A. H. SLAWSON, ET AL.

v.

JOHN A. HANNAH, ET AL.

[File Endorsement omitted.]

Transcript of proceedings of August 7, 1959 and filed August 26, 1959

Transcript of proceedings in the above-entitled actions before the Honorable John Minor Wisdom, United States Circuit Judge; the Honorable Ben C. Dawkins, Jr., United States District Judge; and the Honorable Edwin F. Hunter, Jr., United States District Judge, re: constitutionality of the Civil Rights Act of 1957, at Shreveport, Louisiana, on August 7, 1959.

413 *Appearances*

Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, Baton Rouge, Louisiana; George M. Ponder, First Assistant, Attorney General, State of Louisiana, Baton Rouge, Louisiana; of counsel.

Messrs. M. E. Culligan, Sr., 301 Loyola Avenue, New Orleans, Louisiana; John E. Jackson, Jr., 301 Loyola Avenue, New Orleans, Louisiana; William P. Schuler, 301 Loyola Avenue, New Orleans, Louisiana; Albin P. Lassiter, Courthouse, Monroe, Louisiana; N. C. Dalton, 140 St. Louis Street, Baton Rouge, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Lester Hughes, Natchitoches, Louisiana; William N. Shaw, Homer, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Richard Kilbourne,
414 Clinton, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Fred L. Jackson, Homer, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Ferdinand A. Cashio, 1313 Centenary Drive, Shreveport, Louisiana; J. Reuel Boone, Many, Louisiana; France Watts, Franklinton, Louisiana; Cameron C. Minard, Columbia, Louisiana; Ragan D. Madden, Ruston, Louisiana; Edwin L. Blewer, Shreveport, Louisiana; Henry J. Roberts, Jr., 301 Loyola Avenue, New Orleans, Louisiana; Honorable Bruce Bennett, Attorney General, State of Arkansas, Little Rock, Arkansas; for complainants.

Messrs. W. Wilson White, Department of Justice, Washington, D.C.; D. Robert Owen, Department of Justice,
415 Washington, D.C.; T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; for defendants.

Mr. Sidney Young, Official Reporter, United States District Court, Western District of Louisiana.

Judge WISDOM. We have one case fixed for today. Will you call the case, please?

The CLERK. Civil Action No. 7479, Mrs. Margaret M. Larche, et als., in their Individual Capacities and as Registrars of Voters in and for their Parishes of the State of Louisiana, versus John A. Hannah, et als., Individually and as members of the Commission on Civil Rights.

Judge WISDOM. Attorneys, are you ready in this case?

Mr. GREMILLION. Yes, Your Honor.

Mr. WHITE. Yes, Your Honor.

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Judge WISDOM. We have had a preliminary discussion of this matter. By agreement of counsel, it has been decided that the restraining order will lapse at the end of this hear-
416 ing, and the Commission, on its part, will not attempt to bring any hearing until a decision is handed down in this case—that is, any hearing in Shreveport.

The attorneys in the case have entered into a written stipulation.

Has that written stipulation been filed, General Gremillion?

Mr. GREMILLION. Yes, Your Honor.

Judge WISDOM. Do you also have a stipulation you wish to enter into the record?

Mr. GREMILLION. At this time, if the Court please, I would like to stipulate between counsel for the Commission, represented by Mr. Wilson White, and counsel for plaintiffs, that the affidavits which were timely filed in this matter pursuant to the rules of the Court be accepted by the Court; and it is further stipulated that should the particular affiants be called, all of them would have testified to the contents of the affidavits submitted and filed in evidence.

Judge WISDOM. Is that correct?

Mr. WHITE. That is correct, sir. I don't know whether it is necessary to specify the affidavits, Mr. Gremillion.

Mr. GREMILLION. The affidavits, as I understand it, I think, there were seven that were timely filed, but this is a class action, and I believe any one of the affidavits would have
417 sufficed. The affidavit would show the chronological history of the facts which led up to the testimony.

Judge WISDOM. Mr. White, have you and Mr. Shaw entered into a stipulation?

Mr. WHITE. We feel, if Your Honor please, if at the luncheon recess we had a little more time, we could get it in better shape.

Judge WISDOM. We really have two cases before us today, and we believe that the legal issues are substantially the same, and perhaps there can be a stipulation as to the second case.

Would you call the second case?

Judge DAWKINS. Civil Action No. 7480, J. A. H. Slawson, et al., versus John A. Hannah, et al.

Judge WISDOM. Mr. Shaw, would you care to make a statement?

Mr. SHAW. May it please the Court, subject to the agreement spoken of by Mr. White that we get together to complete the stipulation, we are ready for argument in the case.

Judge WISDOM. At this time, I would like to state there has been a general agreement, for the allocation of time for the arguments. General Gremillion will present his argument in an hour, divided as he sees fit in the first case. General White will take equal time. Mr. Shaw will have a half hour
418 for the second case, and the Government will have equal time.

We are very happy to have with us today General Bennett from the State of Arkansas.

Mr. GREMILLION. May it please the Court, at this time it gives me great pleasure to introduce the Attorney General of the State of Arkansas, Mr. Bruce Bennett, who has filed, with the permission of this Court, an amicus curiae brief.

Judge WISDOM. We are pleased to have you with us, General Bennett.

If you care to make a short argument, we will be very glad to hear from you.

Mr. GREMILLION. When we had the pre-trial conference, it was my understanding the Commission would agree not to hold a hearing on Louisiana matters, and the Court said, in Shreveport.

Judge WISDOM. The understanding is, that the Commission does agree not to hold a meeting with respect to Louisiana matters at this time, until a decision is handed down in this case.

Mr. WHITE. Yes, sir.

Judge WISDOM. Judge Dawkins suggested that I might call to your attention that we are anxious to have the benefit of such further briefs as you care to file. A period of ten
419 days will be given each side within which to file briefs. Thereafter, we will take some time to consider the matters, so do not expect an immediate decision.

General Gremillion, you carry the burden, I believe.

Mr. GREMILLION. May it please the Court, at this time, I would like to file a memorandum prepared by one of our counsel, Mr. Frank Looney. I would like to file that in triplicate.

Also, I would like to file a memorandum of authorities, prepared by Mr. Scott Wilkinson, of Shreveport, also of counsel,

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and I would like to file a reply brief, which we intend to use in rebuttal.

I would like to file these at this time, and also notify the Court that copies have been served on opposing counsel.

If the Court please, we would like to first thank the Court for its kindness in arranging this hearing, and for its kindness at the pre-trial conference in ironing out matters which will save all the litigants', and I am sure the Court's, time.

At this time, I would like to offer, on behalf of plaintiffs—and I am using the word "plaintiffs", Your Honor, because we are the plaintiff in the action before this Court.

420 I would like to file all the pleadings, the oral stipulations, the affidavits filed, the citation attached to the petition, the temporary restraining order issued by Judge Dawkins on July 12, I believe it was; all of the pre-trial memorandums and exhibits filed by us and all verified copies thereof.

I would like to file in the record, the returns on the writs on the members of the Civil Rights Commission and the various documents which have been attached to the stipulation entered into.

Judge WISDOM. It will be so ordered.

Mr. GREMILLION. If Your Honor please, we have filed a printed brief on the various positions which we assert as to the unconstitutionality of the Act of 1957 itself, and as to the unconstitutional actions and ultra vires resolutions adopted by the Civil Rights Commission.

Argument number one relates to the fact that Act of Congress creating this Commission is an unconstitutional delegation of power. I am not going to dwell too long on these particular matters in my brief because I know the Court has read this brief because we filed it a week ahead of time.

The purpose for raising this question is simply to show this Court that the matters sought here is an unconstitutional delegation of power by the Congress.

421 Under the Fifteenth Amendment, the Congress of the United States can regulate any deprivation of voting as concerns the Federal Government and as concerns the State and State Officials. But, the question of legislation for voter qualifications, or registrations, is strictly one reserved by the State under the benefit of the Tenth Amendment.

We have raised, in this case, the question of the constitutionality of the Act, and the action of the Commission; and we state that this Act is so broad and so inseparable that it is impossible for this Court to pick out that which is constitutional and that which is unconstitutional.

In the case of United States v. Raines, which came, I believe, from the Middle District of Georgia, Section 4 of the Act was declared unconstitutional.

That was the section which authorized the Attorney General to seek injunctions against individuals and the Court very properly held that an individual could not be deprived of a voting right by an individual.

That was also upheld by the Supreme Court in the case of United States v. Rice, where it said: "Where a statute is enacted in general terms sufficiently broad to apply to wrongful acts, outside as well as within, the constitutional juris-
422 diction of Congress, such a statute cannot be limited by judicial construction so as to make it operate only on that which Congress might rightfully prohibit."

Judge WISDOM. Is it your position that this delegation is under the Fifteenth Amendment only?

Mr. GREMILLION. Yes, Your Honor, and subject to the limitations provided by the Tenth Amendment of the Constitution.

Judge WISDOM. The point of my question addresses itself to the authority of Congress to enact legislation dealing with Federal elections, or elections concerning Federal officers under Article 1. You are familiar with the Classic case, in which the Court distinguished between the Fourteenth and Fifteenth Amendments which relate to State action and other authority from the Constitution which might relate to private action.

You take the position this Commission derives all its authority from the Fifteenth Amendment?

Mr. GREMILLION. Yes. The only source of power that the Federal Government has to pass on legislation dealing with the right to vote is that contained in the Fifteenth Amendment which authorized Congress to prohibit, or punish, purely individual private action depriving another of his right to vote on account of his race or color.

423 Therefore, any legislation—I know, the opponents are going to say they are a fact-finding body, but, as such, they would be finding facts, that would be interpreting

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legal rights; because the right to vote is a legal right and any facts they might find under the terms of the Act would have to be reported to Congress for the sole purpose of legislation which would determine voter qualifications and voter registrations which is a matter reserved, exclusively, to the States.

Judge DAWKINS. What Judge Wisdom is driving at is, does the equal protection clause of the Fourteenth Amendment come into play in matters of this kind?

Mr. GREMILLION. No, I do not think it does.

Judge WISDOM. The question that is disturbing me in this case is this: the constitution provides, as you know, in Article 1, that the people choose Congressional representative. It was held in the Classic case that the right to choose representatives included the right of persons to vote in elections respecting Federal officers.

Does the right of the people to vote in Federal elections permit a private individual to prevent, intimidate, coerce a private person—or allow a private person—to interfere with voting in the election of Federal officers?

424 In other words, the equal protection and due process clause of the Fourteenth Amendment and the prohibition against discrimination in the Fifteenth Amendment may not, necessarily, be the power or the authority for this delegation to the Commission.

Congress, as was held in the Classic case, does have the right to legislate with respect to elections affecting Federal officers, and to prevent private action which interferes with a voter voting in such election.

Mr. GREMILLION. Of course, the answer to that comes back to the concept of our Government. The rights of the Federal Government, as Your Honor well knows, are derived from the rights that the State gave to it. The Fifteenth Amendment never was intended, and I don't think I have ever included any question of due process of law that might be exercised under the Fourteenth Amendment, and I don't think there is any conflict there.

Judge WISDOM. I think you may be right there. I don't want to argue this point, but it is a question that is disturbing me. I think, unquestionably, the Fourteenth and Fifteenth Amendments prohibit State action and not private action, but I am not at all sure that the Constitution did not, as a whole, and particularly Article 1, does not allow the Congress to pass

laws that will make effective the right to vote in Federal elections.

425 In other words, if Article 1 gives the people the right to choose Congressional representatives, then to make that right effective, Congress has the power to pass any laws that are necessary.

As you know, under Section 8, Congress does have the right to pass any laws that are necessary and proper to enforce the previous rights referred to.

Mr. GREMILLION. I don't think you can read in one section of the Constitution to another unless it applies.

The most recent case on that matter was the Raines case which held that by virtue of the Fifteenth Amendment, Congress did not have the authority to investigate possible deprivation of the right to vote and have that vote counted other than under the color of law. Therefore, Congress exceeded its authority, under the Fifteenth Amendment, and it illegally invaded an area which was reserved to the State under the Tenth Amendment of the Constitution.

That was borne out by the Raines case, and the latest expression of the United States Supreme Court is that of Greene v. McElroy.

Judge HUNTER. Of course, the Classic case, which Judge Wisdom referred to, involved a criminal prosecution under a Federal statute, where, in Louisiana, at a Congressional election, down in South Louisiana, fifteen votes were cast for "A", but they were counted for "B".

426 That, Judge Wisdom says, comes under Article 1, Section 2 of the Constitution, which says that an elector that is qualified to vote in the State election is qualified to vote in Federal elections.

As I understand from reading the brief of the Government, they rely totally on the Fifteenth Amendment.

Mr. GREMILLION. That is correct. I might add, the Classic case was a criminal statute and it was passed, based on Article 1 of Section 4, which has no application to Section 15, and that, of course, applies only to elections.

As far as Louisiana laws are concerned, any individual has ample protection, because we have criminal statutes under which a person can be prosecuted. That is exactly what was done, and those people were punished under laws specifically reserved to the State.

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Judge HUNTER. I understand from what I read in the paper, that you made the statement Louisiana has nothing to hide. The registrars have nothing to hide. All you want is for them to testify when they are given constitutional rights. Then, why do you attack the constitutionality of the statute? Why don't you limit your attack to the parts thereof which you think deny to Louisiana citizens their rights?

Mr. GREMILLION. I have maintained that in this Court and I maintain it now. We have no objection to any
427 legal constitutional conduct of an inquiry into the alleged deprivation of voting, but we say Congress has no authority to invade State's rights in this particular matter. We say Congress has no right to adopt an investigative measure which invades, at least, eight or ten basic constitutional guarantees afforded, not only to citizens of Louisiana, but citizens everywhere.

Judge HUNTER. You don't mind being investigated, but you want to be investigated constitutionally?

Mr. GREMILLION. Correct. We have no assurance that under the present statute, the constitutional rights of these individuals would be allowed, so we have to attack the statute as a whole.

Let me say that much will probably be made by the defense that they are exempt from the administrative procedure act.

I would like to point out Judge Dawkins', in a very well reasoned opinion which we thoroughly agree with, while I am cognizant of the fact his Honor reserved the right to change his mind at a later date, our argument is based primarily on the fact that his reasons were correct and they are accurate findings of law. He did not go into the constitutionality of the matter.

We are going to make a strenuous effort to show that
428 his findings in the matter and the issuance of the temporary restraining order was well reasoned, both in law and in fact.

Judge WISDOM. General Gremillion, assuming the Act applies, would all the safeguards in that Act, necessarily apply to purely a dispitory hearing?

Mr. GREMILLION. Yes.

Judge WISDOM. Why?

Mr. GREMILLION. Because this particular commission investigates and reports to Congress. It reports suggested legis-

lation to Congress. It adjudicates. It determines the credibility and pertinency of evidence.

Judge WISDOM. Let me say this: It does not adjudicate in any sense that any of the regulatory commissions, or agencies, adjudicate. For example, when the Federal Power Commission has a hearing on a complaint, or the Interstate Commerce Commission has a hearing on a complaint, it is in the nature of a trial. This is a pure investigation, which I take it, is the hearing contemplated in this case and contemplated in the statute.

Is such a hearing analogous to, or similar, in any way to the adjudications of the other regulatory agencies?

Mr. GREMILLION. Yes, Your Honor.

Judge WISDOM. Tell me why. That is a serious question.

429 Mr. GREMILLION. Because it was found in Judge Dawkins' temporary restraining order this was an agency of the Executive branch of the United States.

Judge WISDOM. There is no question about that.

Mr. GREMILLION. Then, it being an agency of the United States, it would have to be subject to the regulations of the Administrative Procedure Act, unless Congress expressly eliminated it therefrom, as provided by the Administrative Act itself. Congress could have said, as it did in the Marcello case, we don't have to use the exact same language in order to relieve it from the Administrative Act. It has to use that language which gives the witness the right to defend himself, the right to cross examination, the right to submit evidence, and the right to counsel and all the traditional safeguards and guarantees which we are entitled to in the United States.

Judge WISDOM. In the Marcello case, there was a ruling that Marcello should be deported.

There are some other rulings that adjudicate a controversy and fix rights.

This is purely an investigation into facts.

I think there is merit to your point, and I am simply telling you the questions uppermost in my mind.

430 Judge DAWKINS. That is one of the points I want you to be certain to answer in your briefs. I am like Judge Wisdom in this sense: on the question of adjudication, does not that word necessarily connotate the passing upon

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rights—the fixing of rights, or a penalty or something of that sort, rather than simply finding facts?

Of course, you go on to argue and I took note of that in my original opinion, inferentially, at least, what you want is a fair finding of fact and not a one-sided finding of fact, because whatever is recommended to the Congress, that is reported as a fact by the Commission, Congress might well use it as a subject of legislation which could effect the rights of Louisiana citizens, and that's why you are concerned about it.

In addition, there were these ideas of fair play, which you say are absent in the Commission's rulings and in the statute.

Mr. GREMILLION. That is correct.

Judge DAWKINS. I do want you to answer on the applicability of the Administrative Procedure Act wherein these authorities Mr. White cited in his brief, pointing out it must be an adjudication, per se, and not indirectly.

Judge WISDOM. If I may make a point that to me is important: it seems to me, you would be on sounder ground if you threw the Administrative Procedure Act overboard and
431 say whether or not this Commission comes under that Act still in an investigation, and since you are investigated, you should have the right to cross examine.

That is a question I would like Government counsel to answer.

Mr. GREMILLION. I will say this: as far as I am concerned, the Civil Rights Commission can go on either side of the fence. It can belong to the Administrative Procedure Act or it can go the other way.

If the Administrative Procedure Act applies—and let me point out to the Court that there are only two examples, that is, military tribunals and internal security regulations, and the Supreme Court in the Greene case went further than that by saying that even though the internal security regulations were exempt from the Administrative Procedure Act—even though that particular statute was exempt in the Greene case, it said Courts had to protect the traditional safeguards of our Constitution, namely, the right to cross examine and to be faced with your accuser and to know the nature of the accusations.

Suppose they are not under the Administrative Procedure Act, then Congress did not expressly express this Act, regardless if it is an investigation or finding of fact agency. Congress certainly has the power to legislate. We have no argument with that.

432 Congress delegated this authority, and here we talk about fair play, which Your Honor mentioned. We have nothing to hide. We have consistently called upon them to give us our traditional safeguards and they have refused to do so.

Let me say this: in Section 1011 on page 14 of the reply memorandum I submitted, it says: "No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so expressly."

We contend the Administrative Procedure Act is applicable, but to answer the argument on the other side of the fence, Your Honor, you can read the Civil Rights Act time and time again and you will note there is no provision in there for cross examination. You will notice there is no provision in there for the production of witnesses unless the Commission itself decides to do so. There is no provision in there that will protect an individual against a defamation of his character. You will notice there are no provisions in there which authorize the Commission to adjudicate its findings.

In other words, this Commission, as a fact-finding body, could determine certain facts and it, itself, would then be in a position as to whether it wants to report them to Congress, or not.

433 Judge HUNTER. Mr. Gremillion, couldn't it best determine what the facts are by permitting cross examination and thus revealing the entire picture rather than one side?

Mr. GREMILLION. That is exactly what we are contending.

Suppose a witness is placed on the stand and they ask him a certain question and he may not care to answer it? His only remedy then would be to say, "I desire to invoke the Fifth Amendment."

Your Honor knows the position the public takes when someone invokes the Fifth Amendment. We all know what taking the Fifth Amendment means in the eyes of the public.

He can have an attorney, but his attorney can say, "You take the Fifth, or answer." That is the only thing an attorney can do in representing a client in a hearing.

It may be the Commission is attempting to determine facts, but when it is doing it in that particular manner it is violating every provision of the Constitution and the traditional safeguards guaranteed our citizens by the Constitution.

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Judge HUNTER. Relative to the application of the Administrative Procedure Act, I think the reports of the Committee show that both Congressman Celler, who is Chairman
434 of the Committee, and Congressman Keating, who is a member of the Committee, stated this Commission was to be ruled as a Congressional Commission, and Senator Talmadge said that looks like what it was going to do.

They seem to me to have meant to give this Commission the same rights they have.

As to what rights they have and what rights they can delegate, I think those are serious questions.

Mr. GEMILLION. I can only repeat what I have been saying all along.

Your Honor really is not asking a question, but making a statement.

We contend in argument No. 1, in our brief, that they have no authority to delegate in this particular manner.

Judge WISDOM. Is your argument they have no authority to delegate at all to a commission?

Mr. GREMILLION. No, I don't mean that. Congress has no authority to delegate voter qualification or registration laws because that is the province of the State.

Judge WISDOM. Where does it say that?

Mr. GREMILLION. In the Tenth and Fifteenth Amendment.

Judge WISDOM. No, I mean, there is, in the Civil
435 Rights statute, a section which says Congress shall delegate the right to investigate voter qualifications. Not the determination of the qualifications, but whether or not there is discrimination in applying those qualifications.

Mr. GREMILLION. Discrimination is not qualification—deprivation of the right.

Judge WISDOM. It amounts to the same thing.

Mr. GREMILLION. Who could deprive an individual of his right to vote? No one but the registrar.

The registrar looks at the card, and he determines whether the card is filled out correctly and determines whether the individual is qualified to vote. That registrar is in possession of the card until the election. Therefore, the fact-findings of this particular Commission are adjudicatory, because the only individuals that could deprive the individual of the right to vote would be the registrar, and in the stipulation, which was introduced, it shows that this Commission received 67 com-

plaints charging these registrars deprived certain individuals of the right to vote. Therefore, we have a real right here. We have a question of a constitutional right and that the registrars are entitled to constitutional safeguards in making these determinations, and in that respect, this Commission certainly investigates and adjudicates a report.

Judge WISDOM. Does this Commission make a de-
436 termination?

Mr. GREMILLION. It makes a report to both Congress and the President. What the purpose of that is, I do not know; but, this Commission, or Committee, is not a Congressional committee.

May I point out that by the Government's own motion and brief, it shows it is an instrument of the Government, which is an Executive branch. Therefore, it does not come under the Administrative Procedure Act.

Judge DAWKINS. In answer to Judge Wisdom's question a moment ago, I might make this observation expressly delegated to the Commission by the Act: Is it determination of the right to vote having been abrogated? To that extent, it is a fact-finding body.

Mr. GREMILLION. Let me point out to the Court, again, that during the course of any proposed hearing the vitally, basic rights: the Government is going to holler they are not being accused. The only person who can deprive another person of the right to vote is the registrar. They were subpoenaed to testify and have not been afforded their rights under the Constitution. Therefore, it is an accusation.

Judge HUNTER. I say this in the way of a statement and I am giving my own thoughts, which I think are
437 probably the thoughts of the Court: the Fifteenth Amendment, of course, as I see it, is the constitutional authority for the creation of the Commission. The power of the Commission is to investigate allegations in writing, etc., that citizens have been deprived of their right to vote by reason of their color, race or religion. That is specifically within the meaning of the Fifteenth Amendment, and it seems to me, there is no encroachment here—I am not talking about the procedure—but as far as the creation of the Commission is concerned, it seems to me, Congress was doing just what it had the right to do under the Fifteenth Amendment. To investigate—not their rules.

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Judge DAWKINS. That is what Judge Johnson held in re: Wallace..

Judge HUNTER. You were saying they were investigating voting rights—voting rights have been deprived people by reason of their color, in Section 1975(C).

Mr. GREMILLION. The Raines case held it was not limited to State action.

Judge WISDOM. That is a question I would like you to make clear for me, to clarify my thinking on it.

I have no doubt the Fourteenth and Fifteenth Amendments apply only to State action.

Suppose that the Act, in terms, stated it derived its
438 power only from the Fourteenth and Fifteenth Amendments and it was only interested in investigating State action. You would not be here today, would you?

Mr. GREMILLION. No, sir.

Judge WISDOM. Really, the case gets down to this: does Congress have the right to create a Commission to investigate private action? Isn't that what the case gets down to?

Mr. GREMILLION. Yes, I think so.

Wait just a minute——

Judge WISDOM. I am not saying there aren't other questions. That is the key question. I say, isn't the question in the case whether Congress has the right to create a commission to investigate private action that deprives voters of the opportunity to vote in elections?

Mr. GREMILLION. That is one of our contentions covered by Argument 1 and 2.

Judge HUNTER. That is the Raines case?

Mr. GREMILLION. That is correct.

Judge WISDOM. The question which I want you to think about when you write your brief, and perhaps, in rebuttal, is simply this: Section 2 of Article I gives the people of this country the right to choose its Congressmen. Doesn't this necessarily carry with it the right to make that choice effective, especially in view of Section 1 of Article VIII, which authorizes the Constitution to make the laws necessary
439 and proper for carrying into execution that power? In other words, the question that worries me is not whether they have a right to investigate State action under the Fifteenth Amendment, but whether they have a right to investigate private action under Article I.

Are the hands of Congress tied when private individuals interfere with voters going to vote in a Federal election?

Mr. GREMILLION. We will cover that particular point in our memorandum.

Judge DAWKINS. Also cover the point whether some of these registrars are the State, or whether they are private individuals.

Judge WISDOM. If the qualifications are not discriminatory, it is solely for the State to decide. We all recognize that.

We have interrupted you a great deal, and I think you are entitled to make a coherent argument without too many questions from me.

Judge HUNTER. And me, too. I apologize.

Judge WISDOM. It is an important case, and I think it necessary to clarify the thinking of it.

With the approval of my brothers, I will give you a few minutes of uninterrupted argument.

Mr. GREMILLION. May it please the Court, I wel-
440 come cross examination. I think I have covered enough about the unconstitutionality of the Act and the various sections. We also covered that in our brief.

I would like to come to the third portion of our argument which states that the rules and regulations and policies of the Commission are based upon no legal authority and are unlawful and unconstitutional because they deny the complainants a right to a full, fair and impartial hearing under the law.

I think the Court agrees the Commission is an Executive agency, at least, temporarily, of the Federal Government. The Commission is vested with judicial function and it is a quasi-judicial body. It performs as such in its hearings. It develops facts. It studies denial of the equal protection of the laws, and it appraises law and policies. Therefore, it must adjudicate to make the varied determinations of authority that Congress gave to it.

As I mentioned previously, it also adjudicates, by its rulings upon the admissibility of evidence at its hearings; by its determination of what is and what is not the truth; by its determination of evidence as to whether such is defamatory or degrading or incriminating; by its rulings on whether or not requests of parties for witnesses will be granted; by its determination and sole judge of the pertinency of testimony and
441 evidence adduced at its hearings, and by judging the

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conduct of counsel and punishing breaches thereof. The Supreme Court in the Wong Yang Sun case v. McGrath said that any act that violated the traditional rights of individuals by adjudicating on particular matters such as these was subject to the Administrative Procedure Act.

Judge WISDOM. What agency was involved in that case?

Mr. GREMILLION. I think it was the Immigration and Naturalization Service, and then they rewrote the law, and that is when they put in the exceptions in this manner: that they allowed cross examination; they allowed representation by counsel and they gave them all the safeguards they were entitled to; and that is when the Marcello case came along and he contended they didn't do it, and the Supreme Court said you don't have to have magical words, as long as the safeguards are given.

Judge WISDOM. Did that come up on an action by the Government to deport?

Mr. GREMILLION. Yes, and he contested it in the Courts.

The Government picks out one particular excerpt. The whole finding of the case is that this particular agency had given the safeguards we claim are not given here and which are provided for by the Administrative Procedure Act.

442 That's why we say this particular Act is unconstitutional, because it varied those traditional rights, and the Supreme Court, in the Greene case, if Your Honor please, said just recently that those rights had to be protected, even though in the Greene case it was part of the security program.

Judge WISDOM. Are you familiar with the proceedings in a deportation case?

Mr. GREMILLION. Generally. I have never handled such a case.

Judge WISDOM. You know there is an adjudication by a trial examiner and a right of appeal. There is everything analogous to a trial of a case, except at a preliminary deportation proceeding, there is no right of appeal to a court.

Mr. GREMILLION. That is the very point we are making. When the Supreme Court declared unconstitutional these immigration laws, this new Act covered those particular points declared unconstitutional in the Wong Yang Sun case.

That's why the Court found, in the Marcello case, that Congress had given the safeguards.

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Let me say this: As far as your immigration cases are concerned, let us not forget that when they get ready to deport someone, he is not a citizen of the United States, and here we are talking about the rights of citizens of the United
443 States that are effected by the passage of the Civil Rights Act. While the law on that point is conclusive on this matter, yet, the right to citizens is what we are seeking to protect here by the filing of this particular petition.

Judge DAWKINS. Suppose you cover this point, which I believe, point 3 or 4 of your brief covers: even assuming the statute is constitutional on its face, assuming that the Administrative Procedure Act is inapplicable, what do you claim your rights are that are being violated by the rules of the Commission—what it proposes to do or not to do? I believe that is really the heart of the case, any way you look at it.

Mr. GREMILLION. Has this Act in question violated any of the provisions of Amendments Five, Six and Nine?

We say, by virtue of Section 102(A), the Complainants are not notified of the nature of the hearing and they would not be notified until the day of the hearing, and at that time it would be too late to prepare any defense and it would be too late to subpoena witnesses to deal with the nature of that hearing in defense of the witnesses so called.

Again, if you look at this matter this way: when a witness is subpoenaed before the Civil Rights Commission, he comes as a two-pronged animal. He comes as a witness and
444 he comes as one being accused, because, as I said previously, the only persons that could possibly deprive an individual of his right to vote would be the registrars, and in this particular case—I want to make this observation to the Court—in this particular case and this is shown in our stipulation, seventeen registrars of voters were subpoenaed in this particular case, and in the other case seven were subpoenaed. This is all in the stipulation.

The Commission subpoenaed some forty other witnesses.

Judge WISDOM. If the registrars are the only ones who can deprive them of their right to vote, isn't it State action?

Mr. GREMILLION. No, sir. Can't they be punished by the Federal Government?

Judge WISDOM. It goes far beyond the question of the registrars, and it concerns the question of whether private individuals may be deprived.

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Mr. GREMILLION. That is entirely possible under the Act, and that is one reason why we say it is unconstitutional.

Judge WISDOM. I would like to hear the answer to Judge Dawkins' question with respect to the particular rights.

445 Mr. GREMILLION. I am coming to that. I was trying to show the Court that here was a situation that was most unusual. I know of no other commission that has ever been created by Congress which has the right of this commission.

Dean Storey said something about the Hoover Commission in his argument, but the Hoover Commission was created to save money. I know of no other commission which has this authority.

A Congressional Committee is entirely different from this. I do think a committee of Congress would have the right, because Congress has that authority.

Judge WISDOM. Can an agent do what a principal can do? Can the principal delegate to an agent?

Mr. GREMILLION. Not when the principal restricts by enactment of legislation that the agent will act accordingly when that particular legislation is unconstitutional on its face because it denies the right of cross examination. It denies the knowledge of your complainants and the nature of your accusations.

We have repeatedly told this Commission we will cooperate. Give us the names of our accusers and we will cooperate with you, because we are just as much interested in the deprivation of voting rights as you are, and if any registrar deprives

446 anyone of the right to vote, I will commend that they be discharged. How fairer can we operate?

I don't think a Congressional committee can deny anyone his basic constitutional right.

Judge HUNTER. If this was a Congressional Committee, do you think it would be depriving you of your rights?

I am reading from a book entitled "Grand Inquest" written by Telford Taylor. Professor Frankfurter, according to page 244 of this book says: "If cross examination is no longer regarded as an essential decency, still those circumstances of past years explain why little attention was paid to committee procedures until recently. And for the same reasons, it is natural, that, over the course of years, the Courts have come to assume

that committees are entitled to determine their own procedures."

Mr. GREMILLION. I understand your question. I agree with the long line of cases set down, and these registrars got just as much rights as other citizens of this State. They have just as much rights as the ghost complainants.

We have stipulated they have the complaints but we
447 still don't know the nature of the complaints and the nature of the accusations.

We are actually a defendant in a proposed investigation in which we are going to be faced by ghost complainants. We are fighting blind accusations.

Judge WISDOM. Do the regulations of the Commission prohibit cross examination?

Judge DAWKINS. Inferentially.

Mr. GREMILLION. It says witnesses may be accompanied by their own counsel.

Judge DAWKINS. Let me read this: "Interrogation of witnesses shall be conducted only by members of the Commission or by authorized staff personnel."

I think that clearly rules out cross examination.

Mr. GREMILLION. This is page 50 of my brief, if the Court please, and I think this answers your inquiry. I am going to read from it because I think it is so accurate: "Defendants have no authority whatsoever in their attempt to hold a hearing at which complainants are adverse parties pursuant to policies, rules and regulations unfounded in law or equity and contrary to express law and our jurisprudence.

"Defendants have denied complainants' rights:"; and I will say that we have requested the Commission—the
448 cooperation of the Commission in these matters, and the Commission has refused, and that is the reason why we are suffering irreparable damage—not in the future, but now.

The complainants have been denied the right:

"1. To be advised of the specific scope of matter and question under inquiry insofar as complainants are concerned,

"2. To be advised of their accusers and have access to the accusations and other evidence against them,

"3. To be confronted by their accusers and cross-examine their accusers."

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Let me digress a little bit: the Commission says they might put a witness on the stand, but that doesn't mean they will put him on the stand. If any registrars' constitutional rights would be violated, such as defamation, there is no procedure whereby you can bring in other evidence, or bring in other witnesses to contradict that particular matter.

May I digress once more: there were 67 complaints. There were 17 registrars and 7 other people in the other suit, which is 24. All of those were subpoenaed by the Marshal. Forty were subpoenaed by the Commission itself. The whole de-
449 sign of that was to keep the names of the witnesses secret, violating the constitutional rights of these people by the very action of the Commission in the subpoenaing of the witnesses that they never intended to let us know the names of the people who would testify, or even the nature of what they were going to testify about. So, how can anyone prepare a defense to such techniques and high-handed procedure?

Judge WISDOM. One final question: will they have all these rights guaranteed any defendant if this case goes to trial? Actually, could not the registrars in this case ignore the subpoenas and then they would be tried for contempt, at which time they would have all the rights that you have referred to—the right of cross examination, and so on?

In what way will they suffer even though they have those rights on the trial of the case?

Judge DAWKINS. In the contempt proceeding, the only question before the Court would be whether or not they were contemptuous. You would not try the question of defamation.

Mr. GREMILLION. You are exactly correct, Judge Dawkins. There is nothing in this Act which gives them any legal redress. The only time the Court is allowed to come into this matter has been knocked as unconstitutional in the Raines case.
450 The section provides that if a witness refuses to honor the subpoena, the Attorney General of the United States may be called upon to ask the Court to command that witness appear and bring his records to the Commission or its designated agent—not in Court—and when that happens, you are right back where you started from, except the Court ordered you to bring your records to Timbuktu, or some other place.

Judge DAWKINS. Shreveport.

Mr. GREMILLION. The Wallace case is not determinative of any issues here. The Wallace case was supported by stipula-

tion of counsel which allowed the Commission to go to the various county seats and look at the particular records.

I want to emphasize this, because it is important: the Court can only order the records produced and the registrar to appear before the Commission or a designated agent. When you do that you are right back to the same rules and the same regulations and the same violation of constitutional right, except the Court of Justice participated in it, and I don't think the law or the justice of this country will prohibit the use of the Courts in such violation of constitutional techniques.

Judge DAWKINS. Let me ask this question? It might more properly be addressed to Mr. White, but let us assume
451 that any of the registrar plaintiffs, or individual plaintiffs, had refused to appear before the Commission and the Attorney General, upon request of the Commisison, applied to this Court for an order requiring their attendance, which is, I believe, up to that point, expressly in keeping with the statute, would this Court, upon such application have the right—the power—to order their appearance before the Commission conditioned upon their being given the right to know in advance the nature of the charges against them, to confront the witnesses against them and cross examine those witnesses?

Mr. GREMILLION. I don't think this Court could legislate. I don't believe you would have the authority. The only way those guarantees would be allowed, would be to have this case brought in to Court.

Judge DAWKINS. Instead of issuing a blanket order, the Court would condition its order.

Mr. GREMILLION. It could be doing violence to what Congress said in the particular Act.

Judge DAWKINS. Is it your point that such an order of the Court would be contrary to those sections of the Act which provide counsel may be present only to advise his clients, and so forth?

Mr. GREMILLION. My answer to that would be, where would the Court have such authority? There would be no adversary proceeding before it.

452 Let me say this: Your Honor, Judge Dawkins, discussed the question of a competent court. Certainly, this Court is a competent court in the execution of legal mandates and orders.

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Louisiana law, as we all well know, provides the registrar is subject to dismissal if he removes the records from his parish seat, and the only time he is excused is by an order of a competent court, but that law says they shall be brought to court.

The authority of the Attorney General of the United States says he has got to come to Court to order you—and this Court would have to order this registrar to take his records to some other place for an indeterminate length of time to let indeterminate individuals examine them.

Judge WISDOM. The Wallace case is material on that point, because the Wallace case is where the court allowed the records to be examined at their location in the registrar's office.

Mr. GREMILLION. And that was done by a stipulation. Alabama might not have such a law as Louisiana. They are honorable and honest, law abiding citizens just as much as anybody else.

I can assure you that the registrars were going to
453 refuse to testify if this hearing was held and a temporary restraining order refused. We were prepared, if such happened, to resist and to file a motion to quash in which we would raise the same constitutional questions and defenses that we have raised here.

Judge DAWKINS. That would be the long way around.

Judge WISDOM. We are all in agreement on that.

You will have full time for a rebuttal, and now we will hear from General White. We will take a fifteen minute recess.

(Short recess.)

Judge WISDOM. General Bennett, would you care to make your argument at this point, or after the Government argues?

Mr. BENNETT. Afterward, sir.

Judge WISDOM. General White?

Before you begin, there is one question that troubles me a good deal, and I would like to have the answer to it or at least consider it in your argument and in your supplemental brief:

Suppose that this Court were to find that the rules and procedures, as set up by the Civil Rights Commission, deprived the registrars in this case of cross examination and confronta-
tion, particularly, would that necessarily strike down
454 the Civil Rights statute as unconstitutional; and I would also like General Gremillion to give some consideration to that question, too.

Mr. WHITE. May I defer answering that until a little later in my argument?

Judge WISDOM. All right. I don't think you need answer it now if you think it will interfere with the course of your argument, but I want an answer during this argument, and you may elaborate more on it in your brief.

Mr. WHITE. As I understand Your Honor's question, should you find the procedure constitutionally deficient, would that ipso facto declare unconstitutional the Commission insofar as its power to hold hearings?

Judge WISDOM. I mean, of course, the regulations the Commissions adopted.

I do not mean the procedure, as set out in the statute, unless they are so connected that they cannot be separated.

Mr. WHITE. That is the point I am coming to, Your Honor. I feel the Commission's procedures are inseparably tied in and related with the procedures that Congress prescribed, so that in effect, should the court find these procedures unconstitutional, I think they would be finding Congress, itself, had been deficient in providing sufficient safeguards.

455 We would like to consider that more in length in our brief.

Judge HUNTER. Do you base that on the statements by Senator Talmadge and Mr. Celler and Congressman Keating?

Mr. WHITE. In part, but more by reason by the fact that the Commissions' rules, with one exception, are the statutory rules laid down in this Act itself.

Judge WISDOM. Are all the rules and regulations in the record?

Mr. WHITE. Yes, sir. They are stipulated.

Judge HUNTER. As I understand it, sir, Congress did say they could have a lawyer and that lawyer could advise you as to your constitutional rights.

Mr. WHITE. That section, Your Honor, touches on paragraph (C) and it reads this way: "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights."

Judge DAWKINS. You say that, inferentially, rules out cross examination?

Mr. WHITE. Yes, sir.

Judge DAWKINS. Does it also rule out direct examination of witnesses for these plaintiffs?

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456 Mr. WHITE. In neither case does it rule out either a kind or cross examination or direct examination of witnesses called on behalf of plaintiffs, in the position of plaintiffs.

Your Honors are aware of the Congressional rule that questioning is conducted solely by members or the authorized staff. That, of course, is the Commission rule.

Your Honors will also take judicial notice of the practice of the Commission to accept questions handed up generally by counsel for a witness or for some interested party, if they see fit to give those questions to the witness.

I may state, or have the authority to state, that the Commission has followed that practice in at least two hearings, the transcript of which are not yet made public.

That practice of the indirect course is spelled out. In some it is not.

For example, I have before me the rules of the Internal Subcommittee of the Judiciary Committee. I think it is almost a pattern for the rules of the Commission.

Judge HUNTER. Another point: there is nothing in the Congressional Act that states one way or the other as to whether or not statements against certain people must
457 be given to those certain people?

Mr. WHITE. Ex parte statements?

Judge HUNTER. The statements you get from some of these people who claim registrars discriminated against them. The Commission denied giving the statements?

Mr. WHITE. That's right.

Judge HUNTER. What is there in the Congressional statute that gives the Commission the right to deny the people as to the accusations against them?

Mr. WHITE. The Act is completely silent either way.

Judge HUNTER. Do you think you can imply Congress wanted to give this power to the Commission?

Mr. WHITE. The power to protect the source of information?

Judge HUNTER. Yes.

Mr. WHITE. I don't think there is any question they had it, by virtue of the kind of Commission they are.

Judge DAWKINS. In that respect, Mr. White, you weren't here, but I am sure you have learned that in the course of the argument and hearing for the restraining order, I believe it was Mr. Tiffany, the Staff Director of the Commission, who stated that the reason the Commission refused to give

the source of information was for fear of economic
458 reprisal.

Without commenting on that one way or the other offhand and indicating no final conclusion one way or the other in this matter, it would seem to me that in so protecting these sources of information, what this Court would have to decide would be whether that policy is paramount or whether the rights of these complainants in this case, to know who accuses them, what the nature of the accusation is—to confront their accusers and to cross examine duress those accusers; whether to deny those claimed rights by these complainants would be committing another violation of their civil rights.

In other words, would it be sanctioning a wrong in order to prevent a wrong?

It seems to me, the case narrows down somewhat to that point, insofar as the rules are concerned.

Mr. WHITE. May I point out that in the stipulation filed today there is an additional, and perhaps, more compelling reason shown by the stipulation for non-disclosure. Now, disclosure was requested by counsel so that the complainants might be prosecuted for perjury for having alleged there had been deprivation of their vote. That is in the record, and actually attached to the stipulation.

Judge DAWKINS. That is not a complete answer to
459 my question.

Mr. WHITE. No, sir. I wanted to amplify the reasons for protection.

Judge HUNTER. You don't mean to say if that had not existed, you would have given copies of these statements?

Mr. WHITE. No, but I think to pose the question properly, we should see all of the balance on the one side, in favor of protection, before we strike the balance.

I would like, if I may, go directly into this whole question.

Judge DAWKINS. In answer to Judge Wisdom's question that you definitely say the rules and the statute are inextricably connected and to strike down the rules would be to strike down the statute——

Mr. WHITE. I think the Court would agree to that.

Judge WISDOM. Should you reach an opposite conclusion after study and in preparing your supplemental brief.

Judge DAWKINS. What we are getting at, Mr. White, is the well-known rule that wherever possible the court will avoid

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a decision upon the constitutionality of a statute if it can decide the case otherwise.

460 Mr. WHITE. On that point, my present thinking is that should these more basic rights which have been discussed, should the Court decide that their denial was unconstitutional, we would say that is a denial by Congress rather than an administrative act of the Commission.

We would like to study and brief that point.

Judge DAWKINS. Judge Wisdom says I, for one, will not hold you to that, if you change your mind.

Judge HUNTER. Neither will I.

Do you think that this Commission has the same powers that a Congressional investigative committee would have if it were down here, instead of the Commission?

Mr. WHITE. Substantially the same.

Judge HUNTER. Do you agree with Congressman Thomas, in 1948, when he is alleged to have said that we will determine what rights you have and what rights you have not got before this Committee?

Mr. WHITE. No. There is one difference: the Committee, I suppose, felt it had the power to disregard the rules such as they were. This Commission, of course, does not have that. But, there is this, Judge Hunter, that the Commission's rules are definitely dictated by the Congress, whereas the Congressional Committee might feel more free to say that is the rule but we are not going to apply it.

Judge HUNTER. You can understand there is a
461 natural reluctance on the part of courts to interfere with the legislative branch.

Judge DAWKINS. That is not necessarily true in reverse.

Mr. WHITE. May I say this: whenever the court interrupts, I much prefer to answer questions rather than to proceed without interruption.

I would like to address myself right now to this question: I think it was Judge Wisdom who first interposed the question that assuming the Act is constitutional and assuming the administrative practice act has no application, what are the constitutional provisions that apply to a commission—investigative commission of this kind, extra judicium any such law as the Administrative Procedure Act.

Here the most vital point to bear in mind is the nature of the Commission, which is a fact-finding and recommending

body—a body that has no right to affect the rights of any person, or impose legal obligations upon any person.

I think the most important case that covers that is the Norwegian Nitrogen Products case which the Court will find in our brief at page 22.

I would like to dwell on that case a little bit so that
462 we can see just what it was. The case involved the tariff measure which as was held by the Supreme Court in this case, and as appears from study of the statutory structure, is purely a fact-finding and recommending body.

In other words, the tariff commission can recommend to the President that a flexible tariff rate may be increased or decreased. That was the salient factor in the decision of the court in this case when it decided that certain safeguards, said to be constitutionally guaranteed, did not apply.

The salient part of this case is the facts and the type of guarantees that are not allowed. It was a dispute between the Norwegian and American nitrogen industries. In order to determine the change of tariff, the commission had to know the cost of each of the industries. The American industry furnished their cost to the commission, in confidence. The Norwegian companies declined to furnish their costs, among other reasons, on the ground that they felt they were entitled to see what the commission had on the American costs. The commission also received exparte reports of its representatives who studied the industry in Norway and other foreign countries, because of the refusal of the foreign countries to give the facts.

So that you had a case where the cost factors of the
463 American company—the reports of investigators for the commission were all hidden in the commission's files.

Judge WISDOM. Let me interrupt for a moment. If I were rebutting that point, I would say the trouble with this case is, that it is tied in with contempt, and when the contempt case is heard, the only issue is whether or not there was contempt of court, which is a criminal proceeding. That is the distinction on the hearing in which there is no right to cross examine witnesses and no right to be confronted by accusers. You have, I think, an entirely different situation, where you merely have a question of determination of the proper tariff. Nobody is going to be put in jail on determination of the proper tariff, so there is not a necessity for confrontation and cross examina-

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tion and the preservation of a person's liberty as there would be in a different sort of case.

Mr. WHITE. If I may differ with Your Honor to this extent: there are no charges against individuals.

Judge WISDOM. There may never be any charges against any of these registrars.

Mr. WHITE. In fact, the Commission has no power to impose sanctions upon them. Its whole function is to study facts and to come up with a final result.

Judge DAWKINS. There is this possibility: as a result of the fact-findings of the Committee, the Department
464 of Justice might well decide to prosecute these complainants here, for violation of, I believe, Section 342 of the Civil Rights Act, which makes it a misdemeanor punishable with imprisonment up to a year and, I believe, a fine up to $500.

Mr. WHITE. Isn't that covered by their right to plead?

Judge DAWKINS. Let us suppose they say we take the Fifth Amendment and the witness accusing them definitely testifies, without having been cross examined, that there was a crime committed as a result of which prosecution ensues. It may well be the registrar in that case has a good defense against their charge of having violated the law. Nevertheless, he has been indicted, or perhaps a bill of information might be filed by the United States attorney. He is put to the trouble and expense of defending himself in a criminal case which, if the Commission heard both sides and permitted cross examination and confrontation, might never have come about.

Mr. WHITE. May I come back to my point that the Commission has permitted the type of cross examination Congressional committees do permit?

Judge DAWKINS. Do you contend that is effective cross examination?

Mr. WHITE. None of us, as lawyers, would say it is as effective as the kind we would conduct personally.

465 Judge DAWKINS. There is involved, not just a question of cross examination, but representation by counsel. That is one of the charges made by the complainants here.

Mr. WHITE. Other than cross examination, I can't see where the representation afforded by the statute is inadequate.

Judge DAWKINS. The statute says counsel can be present to tell them whether or not to take the Fifth Amendment.

Judge WISDOM. General White, this is an equity case, and in all equity cases decrees can be based on conditions.

Would it be within our authority to condition a decree, or order, on the right of the plaintiffs to cross examine their accusers?

Mr. WHITE. Your Honor, I don't think it would for this Court, in this proceeding, to take that step. I would think that would come—I believe it was put by Judge Dawkins as to what would happen should a subpoena be issued and the witness decline, or move to quash, and then you come into an enforcement proceeding.

You then get into a hearing as to the particular facts and issues in his case and whether some cautionary condition should be imposed from the judge asked to enforce the subpoena in order to protect that particular witness.

466 Judge WISDOM. Wouldn't it necessarily be improper for this Court to say, "we will enjoin the hearing, unless the Commission agreed to cross examine?"

Is that improper inequity?

Mr. WHITE. Your Honor, you get back to your first question when I stood up, and that was, would a condition—in effect, a striking down, or disapproval, of part of the Commission's procedure be contrary to the Congressional intent.

Judge WISDOM. I wish you would point out to me in the Act any language that shows you cannot adopt reasonable regulations giving such rights?

What exact language in the statute prohibits that?

Mr. WHITE. Only this, sir, that the Commission's rules may not be adopted in a plenary way. They must be consistent with the rules of procedure laid down in sections (A) to (K) of Section 102. Subject to those statutory provisions, of course, the Commission may adopt reasonable rules.

Judge DAWKINS. I believe I pointed that out, that they had that right to do so in my opinion on the restraining order.

Judge WISDOM. And rules you adopt, you cannot unadopt.

467 Mr. WHITE. Oh, yes. I do want to address myself more particularly, and, if I may, with the Court's permission, go back to the Norwegian nitrogen case.

While I am conscious that it was a somewhat different kind of body, yet I think the principle of that case does control.

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There, the very things I am talking about today was definitely an issue. No cross examination. No opportunity even to see the cost reports of this other company. No opportunity to cross examine the representatives of the Tariff Commission, who made investigation.

The court said because this is an investigatory commission and because it has no right to affect legal liability or obligation, by any action, those rules go out.

I think it is a question where we are really not on wholly new ground, but somewhat no different ground as to just what minimum Congressional safeguards should be required of this Commission.

Judge DAWKINS. In that respect, I notice the Nitrogen case was decided in 1932 at 288 U.S., whereas the Morgan case, which was a non-adversary proceeding itself, was decided some years later, in 304 U.S. It is not cited in your brief, but
468 I cite it in my memorandum ruling, where the Court said the proceeding before the secretary was not of an adversary character, as it was not upon complaint, but was initiated as a general inquiry, is futile. It has regard to the mere form of proceedings and ignores realities.

Mr. WHITE. It is not necessarily a question of whether there are two sides to a case. It is whether the action of the administrative body can affect legal rights.

Judge DAWKINS. Do you agree, in the proposed hearing, that was here restrained, that there were two sides to the case?

Mr. WHITE. Two sides to the case, Your Honor?

Judge DAWKINS. What I am getting at; if the hearing had taken place, would there not have been two sides involved, namely, the camplaining witnesses on the one hand as against the registrars on the other hand?

Mr. WHITE. No, sir, I do not.

Judge WISDOM. There would have been issues formed, would there not?

Mr. WHITE. There may have been issues of fact, but certainly the whole question is not whether one side says "A" and the other says "it is not 'A', it is 'B' ". It is a question of what the Commission can do after it hears that evidence—whose rights it affects.

469 Judge DAWKINS. It is certainly within the realm of reason to conceive that the actions of the Commission, in finding that a registrar had violated someone's rights, for

prosecution to ensue, that otherwise might not have taken place.

Mr. WHITE. Certainly not on any finding of the Commission. I think we all know Government prosecutors, and almost all prosecutors throughout the country, form their own prosecutive opinions.

Judge DAWKINS. That is true, but they would have some pretty heavy weight in favor of prosecution if the Commission found out as fact.

Mr. WHITE. I have seen Congressional committees condemn someone and there was no prosecution.

Judge DAWKINS. There could be, and there couldn't be. Let me put it that way.

Mr. WHITE. I would say, Your Honor, the hearing would probably bring the matter to the attention of the appropriate Federal prosecutor. I will go no further than that. I don't think it would have any weight in affecting his opinion, nor should it.

On a related question of an administrative hearing, the old case of McGrath against Daugherty is also quite significant. It comes rather close to the point Judge Dawkins was making, I think.

470 There, if you will recall, the resolution of Congress, in so many words, directed investigation of the administration of the Department of Justice by Harry M. Daugherty, and his name was used several times in the course of the reports. His brother, who was called as a witness, didn't appear on the ground this whole thing was beyond the power of Congress. First of all, it was a criminal investigation, as such, rather than a legitimate Congressional investigation; but, secondly, and this is right in our case, on the ground that the evidence to be produced might well produce evidence of the commission of Federal crimes, and the Court will, of course, recall that the Supreme Court held that was no ground for refusing to appear, and that the witness must be required to comply.

Judge WISDOM. What is the title of that case?

Mr. WHITE. McGrath against Daugherty, 273 U.S. 135, page 4 of the Government's brief.

The witness never actually appeared before the Committee in this particular case.

Page 16, is where we have another reference to it.

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Again, the point that is brought out, that an investigation by this Commission, or by Congress, may result in evidence of wrongdoing. It seems to me, if you say that is an objection to an investigation, then you are saying an investiga-
471 tion is going to be successful by exposing the evil that is the subject of a bad investigation.

Judge WISDOM. I don't think the object is it would expose some violation of the law. The object is not exposing a violation of the law, but it will subject the witness to criminal prosecution, without his having a right to cross examine his accuser and be confronted by his accuser.

I have not heard anyone object to exposing violations of the law.

Mr. WHITE. I must say that the suggestion that there is less than full opportunity to cross examine and a criminal prosecution may follow just doesn't seem realistic to me.

Judge WISDOM. It might in a contempt case. That is the difficulty, because in the ordinary case—we will say this examination of Hoffa. Hoffa can go over the same ground in a criminal case, if any criminal case is brought against him, but in the contempt case, he cannot go over the same ground.

Mr. WHITE. I want to point something out to the Court which, I think, is of real significance. We mention in our brief three other Congressional commissions which had similar powers to the Commission on Civil Rights. In each one of those, they had the power to punish summarily for contempt, just as the Congress does. This commission does not.
472 It must go to the Attorney General and have a Civil hearing before it is even to decide whether the witness has to testify at all.

Judge DAWKINS. That gets back to my point that I asked Mr. Gremillion, and would probably be a good point for you. Let us assume the registrars failed to show up. Then, the Commission would apply to this Court for an enforcement order.

Mr. WHITE. That's right.

Judge DAWKINS. Could this Court, in ordering the registrar to appear and testify, fully protect his constitutional rights? Could we, for example, order the Commission to grant him the right of confrontation and cross-examination?

Mr. WHITE. Let me put it this way: I tried to concentrate on that question during the coffee break.

If Your Honor should put should a condition in the order, it would mean, if the Commission wanted to comply, it would. If it felt it could not, it would be tantamount to a refusal to issue an enforcement order, which would have its usual course.

Judge WISDOM. Do you think the Court has the power to put that in?

Mr. WHITE. The Court has the power to deny an enforcement order.

473 If the Court wishes to impose a condition, I don't think it is acting out of its jurisdiction. This is not to pass on any individual condition, now, that we are discussing. If the condition was seriously in variance with what I think is the Congressional schedule of procedure, we would have, in effect, a pro tanto declaration that the statute was not constitutional.

Judge WISDOM. Only if the procedures and the statute are inseparably connected.

Mr. WHITE. Yes, sir.

Judge WISDOM. I read the statute several times and I have re-read it recently, and I took a look at it during the coffee break and I failed to find anything in that statute that prevents your giving witness the right to cross examine complainants where they may be exposed to criminal prosecution.

Mr. WHITE. Well, I think this: the Commission adopted its rules using its best judgment as to what was the command from Congress.

I think the question, really, for the Court to decide is whether, in view of the law we now have and that which we will attempt to give the Court in the supplemental brief on the minimum requirements on this type of commission, and viewing the commission in its special status of an ad hoc short-lived body—viewing its overall importance, measure whether

474 there is such a balancing that the procedures as were laid down are adequate.

Judge WISDOM. Don't get the wrong impression. I have an absolutely open mind on this question.

Mr. WHITE. I think it is entirely right to quiz us on the question as to how far there is a mandate from Congress here.

I think what is before the Court is not what the rules ought to be, but whether, as they are, they are unconstitutional.

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Judge WISDOM. I would like to ask you this question: do you believe that the statutes derived its authority from the Fifteenth Amendment solely?

Mr. WHITE. No, sir. That was treated in a footnote on page 5 of our brief. I think footnotes are bad things. I won't have them in the supplemental.

Judge WISDOM. We write them.

Judge DAWKINS. And we read them.

Mr. WHITE. What we say is that the statute was based principally upon the Fifteenth Amendment and also upon Article I and also upon the Fourteenth Amendment.

Judge DAWKINS. You have covered that.

Mr. WHITE. There is a direct statement, too, based upon the protection of the Federal right to vote.

Judge WISDOM. Is this a fair statement of your position; so far as the action of private individuals is con-
475 cerned, do you believe that the Act is constitutional, in that Congress has the authority to legislate even if it affects private individuals under Article I?

Mr. WHITE. In a Federal election.

Judge HUNTER. I don't think anybody, per se, quarrels with you on that point.

Judge WISDOM. Your opponents take a position that Congress can legislate only with respect to State actions.

Judge DAWKINS. There will be the presence of a Federal power without an enforcement authority.

Mr. WHITE. That's right. In part IV of this statute, Section (B), it says: "No person, whether acting under color of law, or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten or coerce any other person for the purpose of interfering with a Federal election."

On that point, since you have brought me back, Judge Wisdom, I think there is one basic defect in any attack on its delegation, and that is you must define, precisely, the limits of a field where Congress is granting investigative powers and not power to enforce.

In Section 104(A)1, it says, "investigate allegations in writing under oath or affirmation that certain citizens of the United States——"

476 That, to me, means official state action. I don't think an individual can deprive. He can interfere or coerce, but he cannot deprive.

Judge WISDOM. General Gremillion is making the same argument when he said only the registrar can deprive them of the right to vote.

Mr. WHITE. There were three bases, the Fifteenth, the Fourteenth and Article I of Section 2, which no one challenges, and there is one other point on that.

In the Watkins case, talking about the power to investigate, this is on page 4 of our brief, they ended with the last sentence: "It includes surveys of defects in our social, economic or political system for the purpose of enabling Congress to remedy them."

They have to view the field in order to recommend legislation.

Judge WISDOM. What is the status of the Raines case?

Mr. WHITE. After the appellee had filed his brief, the court instead of noting public jurisdiction set it on the summary list for early October with the statement, that, at that time, they will determine whether jurisdiction exists, or not.

477 I have asked the Solicitor General about it, but it may mean the court felt the constitutional question should never have been raised in that case.

Your Honors are by far more familiar than I am with some of the dispositions of the Supreme Court, but it is up for actual argument and disposition, I believe, in the early term in October.

I would like to go into, at some length, and discuss the Administrative Procedure Act. Perhaps, I can do that just as well in rebuttal.

Judge DAWKINS. That is a point I am very uncertain about, and it is one of the things I had in mind, when I reserved the right to change my mind in my original opinion.

Judge WISDOM. Is there anything in the statute, in your opinion, that prohibits the Commission from giving the registrars, either notice of the complaints in the form of a summary, or copies of the complaints?

Mr. WHITE. No, sir, nothing in the statute.

I can answer that further by saying I think there is nothing in any of the decisional law which would require them to do so.

I think, if the Court will permit me, I had better take the Administrative Procedure Act a little now because that really isn't rebuttal, at all.

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Frankly, this is one of the hardest statutes to really
478 understand in its application that I have ever had the misfortune to look at. But, there is one basic thing about it that is important, and there is no such thing as all of its procedures applying, because an agency is covered somehow under it. It just isn't that way, at all. There are certain sections which do apply under certain proceedings.

For example, there is a certain section which applies to the witnesses being compelled to appear, but there is no such thing as a blanket provision.

I would like to stress one or two points. As to its general coverage, if Your Honors please, we all keep saying: "any agency of Government except the Congressional, the courts and territorial governments".

Actually, "agency" is defined there, and it says, "any authority of government". It is not just "agency".

Then, you go back to the legislative history and you find "authority" means an authority of government with power to give binding decisions.

That is in our brief. And the quotation from the committee report on that.

So that I think right at the outset, we don't find such a body as the Commission on Civil Rights possibly applicable or subject to the statute, but let me just give briefly my further analysis of this thing:

479 The only sections under which there could be any possible safeguards imposed are sections 5, 6 and 7.

Incidentally, the United States Code is all wrong. You never find them unless you look down at the bottom, but these are section 5, 6 and 7.

Those are the sections that speak of notice of time and place of hearing, its legal authority and the matters of fact and law to be asserted. I am speaking of section 5. I don't conceivably see how section 5 can apply here.

Judge DAWKINS. That is the one I refer to as section 4 in my opinion.

Mr. WHITE. One difficulty is that Congress never has a section 1.

In section 6, it says any person compelled to appear in person before any agency shall be afforded the right to be accompanied, represented and advised by counsel.

That section 6 is a blanket section which applies if the agency is one covered below; if the agency is an authority of government which can make binding adjudications, but that is not the situation here at all. The Commission complied clearly with that one.

480 Also, section 6, provides that the agency shall grant subpoenas upon request if they think it is reasonable. In other words, it is precisely the right the Commission affords on the request of a party to have some witnesses called.

Section 6, even if it applied, is complied with.

Judge WISDOM. That is pretty well treated in your brief.

Mr. WHITE. We want to enlarge on it.

Judge WISDOM. Enlarge on it all you wish. We will be glad to have the benefit of all you have to say in your supplemental brief.

We will give you a few minutes to rebut anything General Gremillion and Mr. Shaw have to say.

Mr. WHITE. Incidentally, I don't think the Court needs a formal offer of our answer.

Judge WISDOM. That will not be necessary.

General Gremillion, do you want to go ahead with your rebuttal?

Mr. GREMILLION. If the Court please, I would like, if possible, since the burden of proof is on us, to close the argument, if the Court has no objection.

Judge WISDOM. All right. If there is no objection, we will hear from General Bennett and then Mr. Shaw.

481 The government will then have an opportunity to answer Mr. Shaw, and we will let General Gremillion close.

Mr. BENNETT. If it please the Court, I would like to say at the outset that I am very gratified that the Court gave my State the permission to enter in this case. We have a State act in which it is my duty to take any and all efforts possible to prevent Federal encroachment upon State rights, and it is from that statute whereby I appear this morning.

I have followed the Civil Rights legislation from 1957 down to date, having testified before the House hearings in 1957 and Senate hearings this year.

I want to make my remarks just as brief as possible, and I think they may be enlightening on a couple of questions the Court submitted.

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First, I would like to ask, is this Commission a rule-making body? Certainly, it promulgates its own rules and regulations.

Second, does the Act give the Commission the power to adjudicate, as contrasted with the powers to investigate?

We say, it has the power to adjudicate. Certainly, it makes its rules of procedure. It has the power to subpoena witnesses.

It has the power to administer oaths. It has the power
482 to take and transcribe testimony. It has the power to determine whether there has been a deprivation of civil rights. What other power does the Court have?

Judge Dawkins asked Mr. White if he thought this was a Congressional committee. I would like to call the Court's attention to the first paragraph setting up the Act:

"There is created in the Executive branch of the government, a commission on Civil Rights (hereinafter called the 'Commission')"

It is in the executive department.

In the second paragraph, it states the Commission is appointed by the President, as contrasted with the Congressional committees, which are appointed by its own members—by the president pro temp. or other leaders in both Houses.

Judge WISDOM. Isn't that true of most Federal agencies?

Mr. BENNETT. Yes, sir, but the question, as I get it, was this: is it a Congressional committee, like the Dies Committee, or the McClellan Committee? Was this a Congressional Committee as contrasted with an Executive Committee?

They tried to set up the Fair Employment Practices
483 Committee, which was to be set up by the President. This was an Executive agency as contrasted with a Congressional committee.

What I am getting at is the heart of your question of whether or not this Court, in its final decree, can impose a limitation upon this Committee to provide that the Committee be confronted with the complainants?

That poses the question that the Judiciary has no right to impose its decrees upon the Executive. If this is an Executive committee, the committee must stand as a whole or fall as a whole.

Judge DAWKINS. Courts often do this: in the course of civil proceedings before it, they order an Executive agency to do or not to do something. If the Executive agency, depending upon its position as plaintiff or defendant in the case, fails to do

so, the court either dismisses the case of the plaintiff; or if it is the defendant, it takes such other action to enforce its ruling.

Mr. BENNETT. Mr. White said he thought this was a Congressional committee.

Judge WISDOM. He said, I think, it has the same powers and attributes as a Congressional investigating committee.

Mr. BENNETT. It is my contention, it is an agency of the Executive branch of the Government.

484 Judge HUNTER. You and Mr. White reached the same conclusion, because each of you say if the rules are wrong, the Act must fall. He believes that is true, and you are saying that is true.

Mr. BENNETT. I hope so.

I don't think anyone mentioned, but I am sure General Gremillion in his usual competent manner, will reply to the question as to whether or not there was irreparable injury upon which to bottom an injunction upon.

As I said, I followed the Civil Rights Act fairly closely the last two years.

In my particular state, of Arkansas, we have what is known as a poll tax. You pay $1 and you vote. We have not had the Civil Rights Commission in our state yet. However, I understand through the hearings we had in May in Washington, they have received a total of three complaints from my state.

I would like to say this: if I have ever seen a commission organized along the lines of a roving Grand Jury, this one is. Who do they report to? What is the idea of the report? Why bring in a witness and compel him to testify against himself without the benefit of counsel—without being confronted with his accuser and without being informed as to who the accuser is?

485 We certainly, in our brief, and I think properly so, compared with procedure of this Commission with the old Star Chamber proceedings that prevailed in England two or three hundred years ago.

Judge WISDOM. That was secret proceeding, was it not?

Mr. BENNETT. The way I understand it, the defendant was brought into the House of Lords. The King's attorney accused him. He was never permitted to open his mouth, and the counsel was not permitted to open his mouth, and the

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House of Lords voted yes or no, and he was never permitted to cross examine or permitted to have any of the safeguards we know today under the Constitution and case law and common law we adopted from England.

Judge DAWKINS. In a Grand Jury proceeding, all the proceedings are secret and are not publicized as would be the Commission's report to Congress, or the President, or the very proceedings of the Commission itself, and in addition to that, if an indictment is returned, then the defendant has the right to a fair, open trial with all the safeguards. If it is not returned, that matter is secret. The fact that he was even under investigation was kept secret.

Mr. BENNETT. Judge Dawkins, one of the most valuable things we have these days is our reputation.

Judge DAWKINS. That is what I am talking about.

486 Mr. BENNETT. This Commission has the right to bring in John Doe and then the Commission makes the report to Congress where John Doe's name is besmirched.

Judge WISDOM. He has an opportunity to testify.

Mr. BENNETT. If he doesn't know what's going on?

Judge DAWKINS. Judge Wisdom, he is talking about where the Commission is operating in Executive session.

Mr. BENNETT. Grand Jury proceedings are secret. If you don't get an indictment, you don't hear about it. But in these Star Chamber proceedings, they can make a report to the United States Congress and mention the registrars' names and they don't even know their names were brought up.

I say, the right of cross examination—to be confronted with your witnesses, which this Commission's rules do not provide for, and I think, they conceded they are both intertwined to such a degree that if the rules fail, the Act should fail constitutionally, and for that reason, the whole Act should be stricken down as an invasion of the Civil Rights of the people of the United States.

Thank you, very much for giving me this opportunity to address the Court.

Judge WISDOM. Mr. Shaw?

487 Before you start, Mr. Shaw, do you know of any case, holding, that in a hearing of this kind the witness is entitled to cross examination and confrontation of accusers?

Mr. SHAW. Frankly, Your Honor, I know of no law that ever attempted to set up a hearing of this kind.

Judge WISDOM. That doesn't answer the question.

Mr. SHAW. I was going to say this: the case of Greene vs McElroy did go beyond what we are asking in this particular case. This particular type of commission we are dealing with here is unique, insofar as I know.

I don't, offhand, recall the citation, but one of the cases I read recently in connection with this, gave a rather elaborate history of investigation, particularly fact-finding commissions.

It spoke of the origin in the English Parliament of this type of procedure, and the Supreme Court of the United States went on to point out the great efficacy of the crown commissions, and the general good reputation they enjoyed sprang largely from the fact that they did not have subpoena power; they were a voluntary commission and, therefore, the facts which they gathered were gathered by people appearing voluntarily before them.

I think that is one of the things which distinguishes
488 this particular commission. In this case, these people—the ones I represent are individuals, and not registrars—but it is true in both cases, they have been subpoenaed to appear before this Commission involuntarily. They have been subpoenaed with the general understanding they are to testify, first, on the basis that certain charges have been made against them in writing, under Section 104 of the Act, and those charges would have to conform with that section, that they denied someone the right to vote on account of race, and so forth.

Judge WISDOM. Your case raises a question of private action, more directly than the other.

Mr. SHAW. Yes, because my people are individuals. One of them was a former registrar, but the remainder have never been officials of Louisiana, as far as I know.

Judge HUNTER. You don't raise the question of unconstitutionality.

Mr. SHAW. I raise the question of whether or not the rules were ultra vires, and, secondly, unconstitutional.

Judge WISDOM. Do you take the position the rules and regulations are so inseparably connected with the statute, that even if the statute were declared constitutional, that the rules and regulations were unconstitutional and the statute would fall, too?

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489 Mr. SHAW. No, Your Honor, except a certain portion of the rules.

The case of Greene vs McElroy is the case, we think, on which the Court issued its restraining order on.

That type of thing—due process—cannot be mistreated. It has to be specifically acted upon by the Congress or legislature.

That was the industrial case.

Judge WISDOM. That was a question of whether or not a person was a security risk.

Mr. SHAW. Yes, sir. The basis of that case is that the Government set up a board to provide who would be permitted to handle certain classified information. The Executive Department set the board up by implication, and in doing so, the board adopted certain procedures and those procedures denied the right of confrontation and cross examination, and so forth.

Judge WISDOM. The distinction in that case is that the board actually made an adjudication, or made a ruling that cost this man his job; is that correct?

Judge DAWKINS. The further distinction is made in the arguments on the preliminary restraining order that that committee did nothing more than neither Congress nor the President authorized that type of procedure, and, therefore, it was reversed on that ground specifically.

490 Mr. SHAW. I believe, as background, Chief Justice Warren went on at great length and with great emphasis on these constitutional rights of confrontation and cross examination, not only in a procedure before an administrative agency of that sort but in all types of hearings and he quoted at length Professor Wigmore's statement as to the value of cross examination in reaching the truth.

Judge WISDOM. Will you eliminate all commissions, or agencies, which have a right to investigate unless the power of cross examination is provided?

Mr. SHAW. No, Your Honor, I would not.

Judge WISDOM. Is this a special commission where cross examination should be allowed, possibly, because of the contempt?

Mr. SHAW. That is one point. This Commission has the right to subpoena. That is one of the powers granted them which is a particular power we are concerned with—and the power we are particularly concerned with is directing them to

investigate allegations in writing under oath which is more than mere fact-finding.

The purpose of that is to develop two things: one, is a basis for prosecution, and I don't think you can get away from that in any way you look at it.

Judge WISDOM. It is not the purpose of the Committee to lay a predicate for criminal prosecution. The
491 purpose of the Committee is to find facts and report to Congress and give Congress sufficient information so that Congress will be informed in passing adequate legislation.

Mr. SHAW. Section 2 and 3 do what you are saying. It gives all the powers in this field, but in every other field.

Section 1, which we are dealing with, sets up this particular type of proceeding.

The primary purpose of that is not merely to find facts. If that was the only purpose, they would have already had the power, by virtue of section 2 and 3.

Judge WISDOM. I don't want you to lose your trend of thought.

You were going to tell us whether it was more than a mere fact-finding commission.

Mr. SHAW. It directs them to make a final report in another section of the act, to Congress at the time they completed these investigations and findings. Congress is telling them to investigate certain crime. That is what we are dealing with here, not general fact-finding power. That purpose is two-fold. The primary purpose is to set up a basis for charges that they have violated Federal law, both civil and criminal.

Judge WISDOM. Has Congress defined action by
492 private persons as a crime where it interfers with a voter voting in a Federal election, except with respect to this very narrow case of a conspiracy that arose out of the Ku Klux Klan, and, therefore, might have sufficient force in the community so that an individual wouldn't need to conspire with anybody.

Judge DAWKINS. I think that would depend on how broad you read the Civil Rights Act.

Judge WISDOM. Is it really accurate for you to say this crime has already been defined?

It seems to me, there may be an area which has to be defined and which may, therefore, be an area which Congress can

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legitimately consider and appoint a commission to get the facts.

Mr. SHAW. I believe Congress, at least in so far as the point you are speaking of, has legislated covering this matter criminally.

Judge WISDOM. I think this is an important point: doesn't that go more to the question of the power of Congress to act in this field rather than the future definition of some crime?

Mr. SHAW. I think it goes to the intent of Congress in setting up this type of commission. If that is their purpose, then the traditional safeguards of due process must be afforded to people under that particular type of
493 investigation.

After all, I think that is the whole question, which is, due process of law—whether or not these people are entitled to that in this type of hearing.

Cut it any way we like. We know, as a practical matter, the Civil Rights Commission functions as a court of public opinion. Previous hearings have already proven that. These people and their reputations, and so forth, are going to be affected by the Civil Rights Commission. We know that. It happened already in Alabama.

I am speaking of my clients. We are not objecting to them going ahead with the hearing, if they would give us the right to prove our side of the case. We would welcome the opportunity.

I would like to say one thing about the hearing which alarmed me and I mentioned it in the original argument, but it has not been mentioned here. A list of questions was submitted in advance.

Judge WISDOM. Is the questionnaire in the record?

Judge DAWKINS. It is attached to General Gremillion's affidavit.

Mr. SHAW. There were 315 questions. Many of the questions go beyond with what a court of law can deal with. They go into moral rights of permitting only educated
494 people to vote. They are purely questions of a person's mental process and his own opinion.

We object strenuously to being brought before a Commission without due process of law and not being permitted to answer to the moral aspects of things.

Judge WISDOM. Why wouldn't the proper time to make that objection be when the question is asked during the hearing?

For the sake of argument, if your clients attended the hearing, and if a question were asked as to their opinion, they would have a right to decline to answer because it calls for a personal opinion.

If it incriminated them, they could plead the Fifth Amendment. Does that hit hard enough at the issue before us?

Mr. SHAW. What we are talking about is the due process of law. If we know everything in advance, we will know how to be prepared to meet that. We don't know that, and we are not going to be prepared to meet it.

A particular portion of the Act is the rulings. The Commission's rulings are final and we cannot appeal it to a court.

Judge HUNTER. Are there any cases, Mr. Shaw, that say Congress cannot delegate to a commission the same investigative powers it has?

495 Judge DAWKINS. You mean a commission of the Executive branch?

Judge HUNTER. Yes.

Mr. SHAW. Here is what the Government says about this Commission:

"Necessarily, as a fact-finding or investigatory body, Congress considered the Commission as its appendage, or vehicle, to serve functions similiar to those of a Congressional investigatory committee."

That raises the question of whether Congress can raise an investigatory commission and make it a vehicle of Congress.

Judge WISDOM. Mere fact-finding does not seem, to me, legislative or executive. It may be either or both. They may be overlapping.

Mr. SHAW. What I am saying in this: if the legislature, or the Congress, can create an agency which is to be an agency of the Executive Department of the Government, yet make that agency a mere vehicle of the legislature, or appendage of the Congress, then we have completely destroyed the separation of powers.

Judge WISDOM. I would consider the separation of powers to be where Congress would legislate, the Executive branch would execute, and the judges shall judge.

496 In this case, the Commission is not being asked to legislate or judge.

Mr. SHAW. The Government, itself, said it is a mere appendage of Congress.

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I say, that they cannot have both.

Judge DAWKINS. They set it up so it is neither fish nor flesh nor fowl.

Mr. SHAW. This is not a Congressional committee. This is merely an executive agency and it is bound by the same rules of the other executive agencies.

I want to point out something else about the Greene case: the court, in that case, did not say Congress had the power to grant to this board, or commission, the right to deprive these people of all these safeguards. It said it would restrict its holdings to the fact that they had not exercised these powers and that such a right could not be granted even though specifically granted.

Judge DAWKINS. In that respect, I believe some reviewer for the United States Law Week made that same observation. This reviewer, who, of course, would be a lawyer, stated with respect to Greene vs McElroy, "the narrow ground of the holding was that neither Congress nor the President has authorized
the defense department to set up such a system, but
497 the opinion carries strong overtones that such a system
may well be unconstitutional even if authorized by Congress."

Judge HUNTER. Let me be sure I get the various disagreements between you and Mr. Gremillion.

Mr. SHAW. I don't say we disagree. We probably are not 100 percent in accord.

Judge HUNTER. First, you agree this Court could, if it found it proper, to strike down, at least partially, the rules of procedure of the Commission without declaring the Act unconstitutional.

Secondly, you agree Congress has the general authority to legislate on this subject matter under Article I, Section 3, of the Constitution.

Mr. SHAW. What I would like to discuss briefly, if we want to test it, the proper way to test it would be to refuse to appear and let them come in Court and get an order against us.

Judge WISDOM. I suppose that would involve a delay, as far as you are concerned. I am in favor of deciding it now, unless the Supreme Court tells us to send it back because we decided it too soon.

Mr. SHAW. That is completely inconsistent with the previous recommendations of the Civil Rights Commission, itself.

498 I would like to quote a statement issued by Governor Battle after the first day of hearing in Montgomery. Governor Battle, after giving his own personal background, said.

"It is from the background, ladies and gentlemen, that I am constrained to say in all friendliness, I fear the officials of Alabama and of certain counties have made an error in doing that which appears to be an attempt to cover up their actions in relation to the exercise of the ballot by some people."

Judge DAWKINS. The Commission also made a resolution to the same effect.

Mr. SHAW. Yes, sir. The Commission issued a statement that it regretted the failure of the people to appear and testify.

It is inconsistent to tell us now we should do that, after condemning these people for doing it.

We are seeking to protect the reputation of the people we represent. As Attorney General Bennett said a reputation is a valuable right.

As the old saying goes: "If you steal my purse, you steal trash. If you steal my good name, you steal everything I have."

499 I think we are entitled to due process of law in protecting our good name in these proceedings.

One statement I would like to point out to Your Honors before I close.

I believe a lot of argument around the Administrative Procedure Act that was raised deals primarily with the discussion of the definition of adjudicate.

I think the definition of "adjudicate", as contained in the Act, would enlighten and change the minds of many people who have not studied that Act very carefully.

"Adjudicate" is not "sanction". All an adjudication is, is a formulation of an order.

"Order" is further defined to mean the whole, or any part, of final disposition, and any final disposition made in this hearing would be an adjudication by this Commission.

The Act definitely provides they shall submit a final report to Congress before a certain date, which would be an adjudication when that is done under the terms of the Administrative Procedure Act.

Further, they have the right to exclude counsel, which would be an adjudication. They have a right to pass

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upon evidence and do other things which would amount to adjudication.

500 I think they come under the Administrative Procedure Act. I don't think it is necessary to decide whether they do, or not, because the opinion of the court in the Greene case requires this procedure be accorded people which would seriously affect the persons involved.

We have alleged it would be a matter of personal reputation, and we can prove that in our suit.

Judge WISDOM. I think we will have a short recess of perhaps ten minutes, and when we come back General White will have an opportunity to speak in rebuttal to Mr. Shaw, and then General Gremillion will close.

I am not sure we made it clear to Mr. Shaw, but we will be very happy to receive any supplemental brief you wish to file and you will have the same ten days in which to file the brief.

Mr. SHAW. Thank you very much.

Judge WISDOM. We will recess for ten minutes.

(Short recess.)

Mr. WHITE. If the Court please, I will be very brief indeed.

One point I mentioned in connection with Mr. Shaw's case will be cleared up when the stipulation is filed.

501 I would like to state to the Court now that Mr. Shaw's plaintiffs are not registrars, but they are persons who have engaged in the challenging of voters throughout the eastern part of the State. There has been a suit filed with respect to Washington Parish which will be covered by the stipulation in which they are charged to be acting under color of the laws of Louisiana because of the authority granted to them as registered voters of the Parish.

Mr. SHAW. May I say, in that connection, that is true of part of them.

Judge HUNTER. What are the categories?

Mr. SHAW. We have one retired registrar——

Mr. WHITE. Each of them is a former registrar or engaged in the purging of voters.

Mr. SHAW. Possibly, with one exception. I am not sure.

Mr. WHITE. One word about Greene vs. McElroy. I want to stress this one fact, that the confrontation issue is the only difference from what we have in this case. It was, as a result

of ex parte undisclosed information from undisclosed witnesses, that the action was taken. That is it.

Executive session has been mentioned. I omitted in my principal argument to point out that in connection with the possible defamatory or incriminating testimony, there is an obligation on the Commission, if it feels the testimony
502 to be of such a nature, to take it in Executive session. That is far from Star Chamber proceedings. It is intended to protect against the very thing discussed here. I think it should be treated definitely as a protection for persons involved, rather than anything else.

Judge DAWKINS. It could be protection, as I understand it from the arguments on the preliminary restraining order—it could be protection either as shown by the statute where it would be defamatory for persons who are accused, or it could be protection for accusers against whom economic reprisals might be secured.

Mr. WHITE. I think that is also possible.

Judge HUNTER. Is there something in the Act that when they hear evidence in Executive session, they are forbidden to say anything about it on the outside?

Mr. WHITE. Yes, it is a criminal penalty. That appears in subsection (G):

"Whoever releases, or uses, in public without the consent of the Commission evidence or testimony taken in Executive session—" and so forth.

That is actually confined to staff members, and so forth, who are under the duty not to disclose it.

Judge HUNTER. Not to the individual?

503 Mr. WHITE. No, sir. Of course, I know the Court is going to give the fullest consideration, perhaps, after our briefs are in, but I want to leave this one point: that is, as each member of the Court has pointed out, Congress did not prohibit, in any specific sense, the Commission from adopting full cross-examination rules.

I would urge upon the Court the strong legislative history in both S. 83, the Senate version which was rejected and which gave all the most meticulous rules right up to the court, and the original House bill which did the same thing.

Judge WISDOM. That was 6127 in 1956.

Mr. WHITE. Yes, sir. Both of them had court-type procedures, and I would like to furnish the Court with some more

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specific reasons, such as Attorney General Brownell's testimony, relative to the reasons for rejecting its suggestion.

Judge WISDOM. I wish you would do that. If they are available, furnish copies of the Committee report on this statute and also the 1956 statute. I don't have the Committee reports except in the United States Congressional Service.

Mr. WHITE. I will dig up everything we can. We will furnish copies of the subcommittee rules as soon as we can get them from Congressional sources.

504 Judge HUNTER. You are saying by implication from those sources that Congress meant these gentlemen on this Commission should not permit cross examination?

Mr. WHITE. Yes, sir, and they should not be confronted by the accusers.

Judge WISDOM. That raises, of course, the difficult question of what is ever meant when Congress rejects legislation.

Mr. WHITE. I wish to thank the Court for permitting me to argue this case.

Judge WISDOM. General Gremillion.

Mr. GREMILLION. May it please the Court, I will try to be as brief as possible.

We do have a few important comments we would like to make which we consider very urgent in the presentation of our case.

First, a lot has been said about Greene vs. McElroy, and I don't want to devote too much time to that, except to say this: that case cannot, in any way, offer any solace, or comfort, to the Government because the mere production of the complainant's accusers at the time of the hearing still does not afford these petitions the opportunity to employ, consult and confer with counsel. These are provisions of the Civil Rights Act which prevent these things which are incorporated into their rules, which I will discuss immediately after this.

505 It will not afford them to prepare a statement in their own behalf, examine their own records, cross examine intelligently, testify in their own behalf, prepare and bring evidence in their own defense and exercise their rights to full protection as indemnification by the Administrative Procedure Act.

Coming to the rules on page 10 to 12, the Government's brief, inferentially, states that the rules that they have adopted are

so tied up with the rules of procedure authorized by the Congress that they cannot be separated.

If Your Honors will carefully read these rules, you will see Rule No. 1 is a reiteration of Section 105(F). Rule 2 is a complete reiteration verbatum of Section 102(A) of the Civil Rights Act, which is public law 85–315.

These are the rules the Commission adopted. They adopted them July 1, 1958. They are just verbatum, right down the line. They quote the Act itself.

"3. In addition to these statutory provisions, the Commission has adopted the following supplementary rules of procedure: * * *"

Then, they go down and they have (A), (B), (C), (D), (E), and (F); and several of them, of course, we say are unconstitutional.

506 For instance, "H. The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing."

If that is not adjudicating and being a judge, what is it?

Then, we come to the next one: "I. Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

There is one, in addition to that, which I would like to comment on that we have not mentioned, and this is in the Act, Section 102(D).

"The Chairman, or acting Chairman, may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings."

Suppose one of these registrars had a witness testifying against him that they denied him the right to vote because he was a person of color and the attorney made a loud objection, or a loud shout, and the Chairman would say, "Get out".

Judge WISDOM. Isn't that like Court procedure?

Mr. GREMILLION. You can punish me by contempt, but not by putting me out of the courtroom.

507 Judge WISDOM. The Court doesn't do that very often. Lawyers are not arbitrary.

Mr. GREMILLION. I have no guarantee the members of the Commission won't do that, and we cannot presume those particular things in the face of constitutional provisions which give administrative agencies that authority.

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That is what we come to when we actually consider what has occurred throughout the years, particularly in the last few years on the growth of administrative agencies. That is why Congress was careful in passing the Administrative Procedure Act.

Much has been made of the Norwegian Nitrogen case. We submit that the Norwegian case does not make the distinction sought by the defendants in their brief.

We simply call the Court's attention to a statement made by the Supreme Court in that case:

"For still another reason, the ruling made by the Commission was not an arbitrary refusal to give the kind of hearing that, in the circumstances of this particular inquiry, was fair and reasonable."

In other words, even in a regulatory proceeding the Supreme Court of the United States said you have to resort to a
508 fair hearing. In any kind of a hearing, in order to be a fair hearing, it must be one that gives you fair play.

I also wish to point out that the court, in reaching its conclusion in the Nitrogen case, that a fair hearing had been afforded, there must be a distinction as to the reason why the court reached that conclusion. The petitioner was not subpoenaed to appear at all, and appeared of his own volition.

None of the rights afforded the petitioner in the Norwegian case have been afforded the petitioners in this case.

Let me say this: everyone has a right to have a fair hearing, not just John Doe and one class of citizen. The Nitrogen case is authority for that, and it goes right on through our jurisprudence to the Supreme Court of the United States. It was held in the Morgan case and in the Watkins case that you had to have a confrontation of the witnesses, and all of this, Your Honors, was reaffirmed in the Greene vs. McElroy case.

I am going to ask the Court to pay particular attention to our reply brief from pages 6, 7, 8, 9, 10 and 12, in which we discussed the irreparable injury afforded our clients. I am not going to go into that, because I think our brief on that is sufficient.

509 Judge Dawkins asked the question could the Court stipulate rules that the procedure could follow in the event you asked for an enforcement order.

Judge WISDOM. I would put it in these terms: we might be able to attach as a condition to granting the decree, the require-

ment of reasonable rules, such as notice, cross examination and confrontation.

Judge DAWKINS. The big question is whether or not, if we did so, would the Supreme Court affirm it.

Mr. GREMILLION. It is our opinion this Court is not cloaked with that authority because even if it were, I am sure the rules would be—

Judge WISDOM. Don't you want us to say you are entitled to cross examination?

Mr. GREMILLION. Oh, yes.

Judge HUNTER. I don't believe Congress said that. I don't believe Congress said there can be no cross examination. Judge Wisdom interrogated Government counsel, and they said they think it is implied, but it doesn't say that.

Mr. GREMILLION. Witnesses at the hearing may be accompanied by their own counsel for the purpose of advising them of their constitutional rights.

This isn't sufficient, under the decisions of our court. It does not comply with the provisions of the Administra-
510 tive Procedure Act. That is where the conflict comes in. That's why we say when you take the provisions of the Administrative Procedure Act, this particular provision does not apply.

Judge HUNTER. I don't think there is anything in the rules which prohibits cross examination.

Mr. GREMILLION. I don't think the Court can hold that way.

Judge DAWKINS. If we were to adopt the cases that the General White urged to the effect that this is merely, in effect, an arm of Congress, would we be rewriting the rules of Congress by requiring that cross examination and confrontation, etc., be allowed?

Mr. GREMILLION. When you consider Section 102 (A) through (H).

Let us remember the purposes of the Commission are threefold. They want to investigate voting deprivation because of color, and they are also to go on and look into discrimination in other fields and determine the application of Federal laws, and so forth. Here is where they say that is not necessary: we already have laws on that subject. You talk about the Classic case. That was easily distinguishable. That was a Federal prosecution of a violation law in a Federal election. That is not present here.

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Judge WISDOM. I talked about that case only to show it is not necessary to say that this Commission derives
511 its authority only from the Fourteenth and Fifteenth Amendments that deals with State actions. But, on the contrary, Congress has the right to legislate with private persons, under Article I of the Constitution.

Mr. GREMILLION. That may be so. Those laws already exist. Congress authorized this Commission to investigate violations of State law. Bear in mind that we have good election laws in this State. Those elections laws and registration laws were enacted pursuant to Article X of the Constitution of the United States. Any violation of our State laws, or any discrimination, is already covered by State law.

So, therefore, what would be the purpose and authority for Congress to investigate and look into the denial of due process of law and the applicability of Federal laws or alleged violations of State laws? We have ample redress. We already have ample Federal laws on the matter. We already have State laws on the matter. What we are talking about here is that they are not investigating Federal laws. They are not investigating School Board elections, or local elections, because they do not have the authority to do so.

Judge WISDOM. If that statement is accurate, then, of course, you are completely right; but that is not the way I read
512 it. I read it as applying to Federal elections, and I read it as applying to where there is very little legislation, and that is an area of interference by private persons in Federal elections.

Mr. GREMILLION. Can the Court tell us why the registrars were subpoenaed?

Judge WISDOM. I have no idea.

Judge HUNTER. If they are on the registration rolls, they can vote in Federal and State elections. If you deny someone the right to register, then you are denying someone the right to vote in a Federal election.

Mr. GREMILLION. Any person who claims his rights are so deprived has ample redress in our Courts at no cost to him and he can be heard in 48 hours.

Judge WISDOM. Let us confine the principal part of your rebuttal argument to rebuttal, and not go over ground that has already been covered.

Mr. GREMILLION. I was just attempting to justify my position.

Mr. White told the Court that the Commission's reasons for withholding information about complaints and complainants—the reason for the adoption of the resolution was one of economic reprisal, or alleged economic reprisal. I am not going to burden the Court much longer.

513 I must confess that I was greatly impressed when I heard the President of the United States on television last night. To paraphrase him, he said this: "This is still a Government of the people, by the people and for the people, and not a Government of the people by the Government and for the Government."

I would like to convey to this Court the fact of how deadly serious we are about this entire matter—about how serious are the questions presented to this Court.

Never before in the history of our nation have individual citizens been subjected to as much Governmental control and influence in all aspects of our every day behavior, as they are today. We live today in a far different era of Government influence than we did, say, fifteen years ago.

Rules governing investigations by administrative agencies created by the Congress thirty years ago, when such agencies were few and relatively inactive are not longer applicable or sufficient to protect individuals under the great multitude of active governmental agencies existing today.

This is startlingly brought about when you examine the brief of the Government and note the antiquity of the date of the great majority of cases cited to support their contention

514 that the plaintiffs' constitutional rights have not been violated, whereas later cases have increasingly attempted to protect persons summoned before investigative bodies.

We live in a far different era today than at the time the courts were faced with the facts in the cases cited by the Government.

We present to the Court a most serious question—a question dealing with the rights of man—the basic rights of man—his right to know his accuser, to have his chance to defend his good name in a proceeding characterized by fair play, instead of facing a proceeding of the nature here, faced by Lousiana citizens, registrars and all of this.

We submit the matter to the Court.

Judge WISDOM. Gentlemen, the Court appreciates the thoroughness with which the briefs and arguments have been prepared. We shall study the supplemental briefs very, very carefully.

I am sure I speak for my brothers when I say we have an absolutely open mind on all the important points made today.

Court will be adjourned.

[Reporter's Certificate to foregoing transcript omitted in printing.]

559 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
New Orleans, La., August 14, 1959.

In re Larche, et al. vs. Hannah, et al., Civil Action #7479.

Mr. TOMMY THOMPSON,
Clerk, United States District Court for the Western District of Louisiana, United States Post Office Bldg., Shreveport, Louisiana.

DEAR MR. THOMPSON: Please find enclosed originals in triplicate of plaintiff's reply brief for filing in the above captioned cause, pursuant to request of Court.

If you will be good enough to process same, it would be greatly appreciated.

Yours very truly,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC/le.
encl.

581 In United States District Court for the Western District of Louisiana

STATE OF LOUISIANA, DEPARTMENT OF JUSTICE,
(Jack P. F. Gremillion, Attorney General),
New Orleans, La., August 17, 1959.

Honorable JOHN M. WISDOM, *Associate Justice,*
Fifth Circuit Court of Appeals,
Honorable BEN C. DAWKINS, Jr.,
Honorable EDWIN F. HUNTER, Jr., *Justices,*
United States District Court,
Western District of Louisiana.

YOUR HONORS: There is a typographical error in our post-argument brief at the top of page 14 (our point number IV), 4th line, the word "constitutional" should be "unconstitutional".

Appreciating your kind co-operation in correction of this error and with kindest regards, I am,

Respectfully yours,

M. E. Culligan,
M. E. CULLIGAN,
Assistant Attorney General.

MEC/le.
cc: Hon. T. Fitzhugh Wilson, Hon. Wilson White.

590 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Opinion—October 6, 1959

[File endorsement omitted.]

For plaintiffs: Messrs. Jack P. F. Gremillion, Attorney General, State of Louisiana, 2201 State Capitol, Baton Rouge, Louisiana; William M. Shaw, Assistant Attorney General,

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State of Louisiana, Homer, Louisiana; M. E. Culligan, New Supreme Court Building, New Orleans, Louisiana; William P. Schuler, New Supreme Court Building, New Orleans, Louisiana; W. Scott Wilkinson, Beck Building, Shreveport, Louisiana; Frank J. Looney, Sr., Shreveport, Louisiana; Fred Jackson, Homer, Louisiana; Cameron C. Minard, Columbia, Louisiana; Richard H. Kilbourne, Clinton, Louisiana; J. Reuel Boone, Many, Louisiana; George M. Ponder, First Assistant Attorney General, State of Louisiana, Baton Rouge, Louisiana; Ferdinand A. Cashio, Assistant Attorney General, State of Louisiana, Shreveport, Louisiana; John E. Jackson, Jr., New Supreme Court Building, New Orleans, Louisiana; N. Cleburn Dalton, 140 St. Louis Street, Baton Rouge, Louisiana; Albin P. Lassiter, Ouachita Parish Court House, Monroe, Louisiana; Louis H. Padgett, Bossier City, Louisiana; Thompson L. Clarke, St. Joseph, Louisiana; Lester Hughes, Natchitoches, Louisiana; France Watts, Franklinton, Louisiana.

591 For defendants: Messrs. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; W. Wilson White, Assistant Attorney General, Department of Justice, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; A. William Mottolese, Attorney for Commission on Civil Rights; C. E. Clark, Legal Assistant to the Honorable Robert G. Storey; T. Fitzhugh Wilson, United States Attorney, Shreveport, Louisiana; Berl R. Bernhard, Attorney for Commission on Civil Rights.

Amicus curiae: Mr. Bruce Bennett, Attorney General for the State of Arkansas.

Three-judge court: Judge John Minor Wisdom, Circuit Judge; Judge Ben C. Dawkins, Jr., Chief Judge; Judge Edwin F. Hunter, Jr., District Judge.

592 HUNTER, Judge:

This case originated in the Shreveport Division of the Western District of Louisiana upon the filing of a complaint on July 10, 1959. Plaintiffs are registrars of voters in and for certain parishes in Louisiana.[1] The Commission on Civil Rights is a temporary agency of the United States, created by the Civil Rights Act of 1957, under Public Law 85-315, 85th Congress, U.S.C.A. 42: 1975, et seq. The Commission scheduled a hearing for July 13, 1959, in Shreveport, Louisiana for

[1] Hereinafter referred to as "Registrars".

the purpose of investigating allegations in writing (under oath or affirmation) that certain citizens were being deprived of their right to vote on account of race or color.[2] These allegations accuse the registrars, through their official acts, of having caused such deprivation, and summoned them to appear before the Commission. The subponeas also required the registrars to produce for inspection various voting and registration records within their custody and control.

The suit is against the Commission and its members. Its declared object is to stay the effectiveness of the Commission subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing. The registrars insist they are entitled to this relief because the Commission is
593 seeking to hold such hearing pursuant to rules of procedure which are ultra vires, and which deny to them traditional procedural safeguards. Moreover, the registrars assert that the rules of procedure adopted by the Commission violate their fundamental constitutional rights; and that the Act in its entirety is unconstitutional because it constitutes an unconstitutional delegation of power.[3]

Detailing their complaints, supported by sworn affidavits, the registrars allege that they were served with subpoenas and subpoenas duces tecum issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959; that they have not been informed of the nature of the complaints against them, nor have

[2] Under Section 104(a) of that Act the Commission is empowered and directed to: "(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based; * * *"

The Act also empowers the Commission, or any authorized subcommittee thereof, to hold such public hearings and act at such times and places as the Commission may deem advisable. Said Act also empowers the Commission to require the attendance and testimony of witnesses or the production of written or other matters.

[3] Registrars also contend that the procedural provisions of the Administrative Procedure Act should be applied. We cannot agree. The A.P.A. prescribes in section 7 (5 U.S.C. 1006), specific hearing procedures with respect to two processes; in section 4 (5 U.S.C. 1003) with respect to "rule making", and in section 5 (5 U.S.C. 1004) with respect to "adjudications." The Act contains no hearing requirements except where rule making or adjudications are involved. The Civil Rights Commission is performing neither function here.

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they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine, the written complaints filed against them, nor would it divulge the name or names of the secret complainants; that the rules under which the hearing is to be conducted specifically deny to registrars the right to cross-examine their accusers.[4]

On July 10, 1959 the case was heard by the Honorable Ben C. Dawkins, Jr., Chief Judge of the Western District of Louisiana. The matter was extensively argued and briefed. On July 12th Judge Dawkins granted a temporary restraining order and issued a rule on the Commission and its members to show cause why an interlocutory injunction should not issue.
594 Judge Dawkins, in issuing the temporary restraining order, did not intimate any opinion as to the constitutionality of the statute itself.[5] This three-judge court was convened to consider the constitutional attack.

The principal object and purpose of a three-judge federal court is to decide the constitutional validity of the Act of Congress sought to be enjoined. But where other issues are presented, as they are here, they too should be decided. The parties readily agree that this so and that all issues, both constitutional and non-constitutional, are before this court.[6]

THE CONSTITUTIONALITY OF THE ACT ITSELF

Complainants seek a declaratory judgment to the effect that the Act is unconstitutional because it is not appropriate legislation. Manifestly, this position cannot be sustained.

The Constitution and pertinent decisions of the Supreme Court make clear that Congress may, pursuant to power conferred upon it by Article 1 of the Constitution, legislate to secure the right to vote in federal elections. That power has been found in Article 1, Section 4. Ex Parte Siebold, 100 U.S. 371, 383 (1879); Ex Parte Yarbrough, 110 U.S. 651, 660 (1884); United States v. Mosley, 238 U.S. 383 (1915). It has been

[4] The truth of these facts is not contested.

[5] Judge Dawkins' opinion is made a part hereof by reference.

[6] California Water Supply Co. v. Redding, 304 U.S. 252 (1938); Davis v. Wallace, 257 U.S. 478, 482 (1922); Louisville and Nashville RR Co. v. Garrett, 231 U.S. 298, 304 (1913).

found in Article 1, Section 8, Clause 18, Ex Parte Yarbrough, supra, at page 658. It has been found in Article 1, Section 2, United States v. Classic, 313 U.S. 299, 316 (1941). And, as the Supreme Court noted in the Classic case, supra, at page 315:

"* * * since the constitutional command is without
595 restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of states."

It is equally clear that Congress may, pursuant to Section 2 of the 15th Amendment, legislate to prevent states and their officials from denying qualified persons the right to vote on account of race, color, or previous condition of servitude (Guinn v. U.S., 238 U.S. 347 (1915); In Re Wallace, 170 F. Supp. 63 (1959)). Similarly, Congress may, pursuant to Section 5 of the 14th Amendment, legislate to prevent states and their officials from enacting or enforcing statutes which deny equal protection of the laws.

Since Congress may legislate pursuant to its constitutional powers, and since it may investigate those objects upon which it may legislate,[7] and since it may delegate its investigative function,[8] the issue of the constitutionality of the acts in creating the Commission rests solely on the question of whether the action of Congress was, in fact, an implementation of its constitutional powers. The stated purposes of the act, its fair reading, and its overwhelming legislative history are proof positive that Congress did create the Commission pursuant to its Article 1 power, as well as to its powers under Sections 5 and 2 of the 14th and 15th Amendments,[9] respectively.

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[7] Watkins v. U.S., 354 U.S. 178 (1957).

[8] Endicott Johnson Corp. v. Perkins, 317 U.S. 501–510 (1943).

[9] (A). From the report of the House of Representatives Judiciary Committee (Report No. 291, 85th Congress, First Session) accompanying the bill which became, in pertinent part, the Civil Rights Act of 1957, it is manifest that Congress was legislating pursuant to its Article 1 power. Thus, that portion of the report designated "General Statement" notes: "The provisions of the Bill H.R. 6127 are designed to achieve a more effective enforcement of the rights already guaranteed by the Constitution and laws of the United States. This is particularly true with regard to the right of franchise in federal matters." (At page 5.)

Similarly, the "General Statement" portion continues at page 6: "With regard to the proposals involving the right to vote, the Federal Government has placed upon it by article 1, section 4, of the Constitution the authority

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596 We are mindful of the arguments repeatedly appearing in the registrars' brief to the effect that the power
597 granted to Congress to legislate is specifically limited by the Tenth Amendment. On its face the Tenth Amendment recognizes that certain powers are prohibited by the Constitution to the states, and therefore are not reserved to the states. One of these prohibitions is that no state may deny equal protection of its laws (14th Amendment). Another is that no state may deny the right to vote on account of race, color, or previous condition of servitude (15th Amendment). Still another provision of the Constitution specifically gives to Congress the power to legislate to secure the right of

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to regulate the manner of conducting elections and that authority is further supplemented by the 14th and 15th amendments."

There is further evidence that throughout its deliberations Congress was conscious of its Article 1 power. A clear exercise of that power is illustrated by the enactment of the present subsection (b) of section 1971, Title 42. In authorizing the federal government to prevent certain types of conduct by individuals, its terms are carefully limited to federal elections. And, as the House Report, supra, makes clear (at pages 11–13), Congress rooted this provision in its Article 1 power.

Finally, the history of the terms of the Act which prescribe the duties of the Commission reveals that it was created pursuant to the Article 1 power. Section 104(a) directs that the Committee shall:

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote *and have that vote counted* * * *" [Emphasis supplied.]

The italicized language was inserted by the House after the bill came out of Committee. Representative Hoffman, favoring the amendment, regarded its inclusion as crucial since Supreme Court had held it to be an integral part of the right to vote in United States v. Classic, supra (103 Cong. Rec. App. 4716). Thus, the Commission was directed to investigate deprivations of an aspect of the right to vote which had been enunciated in a case which involved the Article 1 power of Congress.

(B). The 14th Amendment. In the House debates Congressman Celler referred to the Act (103 Cong. Rec. 16088) as "* * * clear implementation of the 14th and 15th amendments." Similarly, in the words of the House Report, supra, at page 6:

"* * * the 14th amendment operates to prevent any State from enacting or enforcing a law which would abridge the privilege and immunity of a United States citizen and denying such a person the equal protection of the laws. *These two amendments expressly authorize Congress to enforce* [Emphasis supplied.]

"* * * the 14th and 15th amendments, both of which expressly confer upon the Congress the power to enforce them by appropriate regulations." (At page 13.)

Above all, the terms of the Act itself which relate to the Commission on Civil Rights demonstrate conclusively that Congress relied in part

qualified electors to vote in federal elections (Article 1, Sec. 2). So, we have here invovled the very powers which the Constitution says are not reserved to the states. The action here is not an invasion of state power merely because state voting and registration records are involved. The congressional power is complete in itself and may be exercised to its full extent. The investigation of alleged discriminatory practices is an appropriate step in the process of enforcing and protecting the right of qualified electors [10] to vote. The Act very definitely constitutes appropriate legislation.

598 THE RULES OF THE COMMISSION

The remaining pertinent and serious questions presented may be thus stated:

(1) Did Congress, in creating the Commission, specifically

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upon its powers under section 5 of the Fourteenth Amendment. By section 104(a) the Commission is directed to:

(2) study and collect information concerning legal developments constituting *a denial of equal protection of the laws under the Constitution;* and [Emphasis supplied.]

(3) appraise the laws and policies of the Federal Government *with respect to equal protection of the laws* under the Constitution. [Emphasis supplied.]

The inclusion by Congress of the italicized language manifests its reliance upon a concept found only in the 14th Amendment.

(C). The 15th Amendment. For example, the statement of Senator Bush at 103 Congressional Record, 13138: "That is the central purpose of this bill: to give meaning to the 15th amendment of the Constitution of the United States." See also the statement of Representative Celler in the House debates at 103 Congressional Record 16088.

[10] Under our constitutional system the qualification of voters is a matter committed to the states, subject to federal constitutional restraints prohibiting discrimination on account of race, color, sex, etc. But it is also true that the right of citizens to cast ballots, and have them counted in congressional elections, in accordance with applicable state laws, is a right secured by the federal constitution, and this right, unlike those carried by the 14th and 15th amendments, is secured against the actions of individuals as well as states. Article 1, Section 2 of the Constitution, in its provisions for the election of members of the House of Representatives, and the Seventeenth Amendment, in its provision for the election of Senators, provides that officials will be chosen "by the people". Each provision goes on to state that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous branches of the State Legislature." So, while the right of suffrage in federal elections is established in the Constitution, it is subject to the imposition of state standards which are not discriminatory (Lassiter v. Northhampton Election Bd., 360 U.S. 45, decided June 8, 1959.

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authorize it to adopt rules for investigations conducted under Section 104(a)(1) of the Act which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them? [11]

(2) If Congress did so authorize the Commission, is such authorization constitutionally permissible?

A careful reading of the several opinions in Groban,[12] Anonymous,[13] and Greene [14] convinces us that, as applied to the circumstances of this case, a serious constitutional issue is presented as to whether or not the rules adopted by this Commission, which deprived these plaintiffs of the right of confrontation and cross-examination and the right to be apprised of the complaints against them, are violative of the Constitution. There is no talismanic formula which can be applied. Every term, the Supreme Court examines the particular circumstances of particular cases in order to apply generalities which no one disputes.

Under the rationale of Greene, concurred in by eight justices,
a decision is not now required on the constitutionality of
599 these deprivations. It is sufficient that we find there to
be nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the

[11] Congress authorized the Commission to hold hearings (42 U.S.C. 1975 (d)-(f)). Congress enumerated specific mandates with respect to certain less fundamental procedural aspects (42 U.S.C. 1975(a)). Congress did not expressly authorize the Commission to deny to parties investigated the right of apprisal, confrontation, and cross-examination. The Commission assumed that they had the power to so do.

On their own, they adopted a rule denying to the parties investigated the right of cross-examination. The rule is 3(i) and reads as follows:

"Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

When informed that a hearing would be held to investigate charges against them, the registrars requested the right to see the accusations and affidavits filed against them. They also specifically requested the names of their accusers. The Commission refused both requests. The denial in each instance was by resolution (see Stipulation).

[12] In Re Groban, 352 U.S. 330, 77 S. Ct. 510, decided February 25, 1957.

[13] Anonymous v. Baker, 360 U.S. 287, June 15, 1959.

[14] Greene v. McElroy, 360 U.S. 474, decided June 29, 1959.

Act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination

Here, plaintiffs are being subjected to public opprobrium and scorn without fair and adequate opportunity to disprove the accusations against them. They are being subjected to the distinct likelihood of losing their jobs. They have been charged with, and are under investigation for, criminal conduct, and are to be examined in connection with offenses constituting federal and state crimes [15] in a hearing which
600 would completely fail to comport with traditional American ideas of fair play and would violate every element of natural justice.

The hearing sought to be restrained herein has been called pursuant to, and would be conducted in accordance with, rules which deny the right of confrontation. The registrars would be denied the right of cross-examination. They would be denied the right to be apprised of the identity of the person, or per-

[15] The Commission admittedly plans to hold the hearing to investigate written allegations that the registrars deprived certain citizens of their right to vote because of their color, race, religion, or national origin (see Affidavits of Registrars and Stipulation No 5). Accordingly, it must be admitted that the registrars are being examined in connection with their alleged commission of federal and state crimes, as follows, to wit:

18 U.S.C.A. 242

"Deprivation of rights under color of law"

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

LSA–R.S. 14:134

"Malfeasance in office"

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six month, or both."

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sons, making the charges against them, as well as the exact nature of the charge. These denials are the products of administrative decision not explicitly authorized by Congress. When we consider that this executive commission has been granted the right of subpoena to investigate allegations which, if true, would constitute the commission of crimes under state and and federal law, and that it is further required to make a report of its findings to the Chief Executive whose duty it is to enforce federal criminal laws,[16] we can reach no other conclusion than to say that if ever the traditional procedural safeguards, spoken of in Greene, were required to protect appears before a commission, then this is the instance. There, the Supreme Court, speaking through its Chief Justice, said:

"Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots.
661 They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., *Mattox* v. *United States,* 156 U.S. 237, 242–244; *Kirby* v. *United States,* 174 U.S. 47; *Notes* v. *United States,* 178 U.S. 458, 474; *In re Oliver,* 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *Ohio Bell Telephone Co.* v. *Commission,*

[16] 42 U.S.C. 1975(c)(b) requires the Commission to submit to the President a final and comprehensive report of its findings. Since the Commission is required to make this report to the President, the Chief Executive Officer of the land, it is fair to presume that a prime purpose of this report is to secure execution and enforcement of the laws presently in effect.

301 U.S. 292; *Morgan* v. *United States*, 304 U.S. 1, 19; *Carter* v. *Kubler*, 320 U.S. 243; *Reilly* v. *Pinkus*, 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-fascist Committee* v. *McGrath*, 341 U.S. 168–169. [Italics ours.]

* * * * *

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., the Japanese Immigrant Case, 189 U.S. 86, 101; Dismuke v. United States, 297 U.S. 167, 172; Ex parte Endo, 323 U.S. 283, 299–300; American Power Co. v. Securities and Exchange Comm'n, 329 U.S. 90, 107–108; Hannegan v. Esquire, 327 U.S. 146, 156; Wong Yang Sung v. McGrath, 339 U.S. 33, 49; Cf. Anniston Mfg. Co. v. Davis, 301 U.S. 337; United States v. Rumely, 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

And Mr. Justice Douglas, concurring in Peters v. Hobby, 349 U.S. 331, says:

"It, therefore, becomes necessary for me to reach the constitutional issue.

"Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor facilities of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. We have here a system where government with all

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its power and authority condemns a man to a suspect
602 class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government * * *."

The Supreme Court, in Greene, clearly and concisely charted a salutary and sensible course to be followed. Whether the procedures under the circumstances here are constitutionally permissible we do not decide. In accordance with the teachings of Greene, we decide only that in a hearing such as the one envisaged here, the Commission had no right to deny the accused Registrars the traditional rights of confrontation and cross-examination in the absence of explicit congressional authorization to do so.

In Greene the Supreme Court held these safeguards were not to be denied to one being investigated for alleged communistic associations and sympathies in the absence of explicit authorization from either the President or Congress. Surely, duly chosen state officials are entitled to the same protection, especially since no considerations of national security are involved. So is every citizen. In Greene, the government did not take the petitioner's job away from him, but he did lose his job as a result of a government finding to the effect that he was not a good security risk. If the Commission here finds the charges against the registrars are true, they are faced not only with public scorn and possible loss of their jobs, but also with probable indictment, arrest and prosecution.

We are impressed, but not persuaded, by the government's argument that the legislative history of the Act proves that the Commission acted at the implied direction of Congress in adopting the rules here under attack. This argument of implied direction cannot be sustained in the face of the following language from Greene:

"The issue, as we see it, is whether the Department of Defense has been authorized to create an industrial security
603 clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on the basis of fact determinations concerning their fitness for clearance made in proceedings in which

they are denied the traditional procedural safeguards of confrontation and cross-examination."

* * * * * *

"If acquiescence or implied ratification were enough to show delegation of authority to take actions within the area of questionable constitutionality, we might agree with respondents that delegation has been shown here."

* * * * * *

"Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use. * * * Such decisions cannot be assumed by acquiescence or nonaction. * * * They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized, * * * but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government, are not endowed with authority to decide them.

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., The Japanese Immigrant Case, 189 U.S. 86, 101; Dismuke v. United States, 297 U.S. 167, 172; Ex parte Endo, 323 U.S. 283, 299–300; American Power Co. v. Securities and Exchange Comm'n, 329 U.S. 90, 107–108; Hannegan v. Esquire, 327 U.S. 146, 156; Wong Yang Sung v. McGrath, 339 U.S. 33, 49; C. F. Anniston Mfg. Co. v. Davis, 301 U.S. 337; United States v. Rumely, 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

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Moreover, even if we were to ignore Greene, which we have no right to do and certainly will not do, we would still reject the government's argument of implication. The rejection by Congress of more extensive rules is neither explicit nor
604 implied authority to eliminate the fundamental safeguards under the circumstances here present. It is true that Congress refused to explicitly provide the safeguards, but it is equally true that there is nothing in the history of this legislation to show that Congress even considered writing into the Act any power of the Commission to do away with apprisal, confrontation, and cross-examination. The silence of Congress was apparently the product of thoughtful compromise. Some members of Congress positively wanted the fundamental safeguards spelled out, while others probably would have approved legislation specifically denying the accused these rights. Congress remained silent.

In Greene the Court specially found that the Defense Department had been authorized to fashion and apply an industrial clearance program but that the Department had not shown that either Congress or the President had explicitly authorized proceedings in which the accused was not afforded the safeguards of confrontation and cross-examination. In Greene the President, in general terms, had authorized the Department of Defense to create procedures to restrict the dissemination of classified information, and had apparently acquiesced in the elaborate program established by the Secretary of Defense which denied investigated parties of the rights of confrontation and cross-examination. The case for authorization there was stronger than here; e.g., in Greene, Part IV, § 2 of Executive Order 9835 specifically stated:

"* * * the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them, and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed * * *"

605 Justice Clark, dissenting, thought the authorization was specific:

"How the Court can say, despite these facts, that the Presi-

dent had not sufficiently authorized the program is beyond me, unless the Court means that it is necessary for the President to write out the Industrial Security Manual in his own hand." The Supreme Court, by an 8–1 majority, rejected the authorization as being insufficient.[17] We are not free to do otherwise here.

The conclusion is inevitable here that the burden is upon the government to show the "explicit action" by Congress authorizing the adoption of the rules which refuse to permit cross-examination, confrontation, and apprisal. In this case the government has made no attempt to point to any "explicit action" of authorization. Congress has made no such authorization, and absent such an explicit authorization, the rules in these particulars are clearly ultra vires.

The Equities

Proper voting practices are the cornerstone upon which our democratic balance is maintained. Discrimination upsets that balance. Moreover, discrimination clearly violates the Constitution. Steps designed to determine whether there has been discrimination are therefore of grave public interest and importance. When there are charges, as there are here,
606 which state that by one means or another the vote is being denied to a qualified person, the public interest will be served by learning all the facts. Certainly, the surest way of finding out all the facts is to hear from everybody, and the surest test of a witness's veracity is his confrontation and cross-examination.

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[17] Equally as decisive on the issue of explicit authorization in areas of doubtful constitutionality is Kent v. Dulles, 357 U.S. 116. There, Congress had enacted legislation requiring every passport application to "contain a true recital of each and every matter of fact which may be required by any rules" of the Secretary of State, and that requirement had to be satisfied "before a passport is issued to any person." In this context, the Secretary asked for, and petitioners refused to file, the required affidavits stating whether they then were or ever had been members of the Communist party. Thereupon, the Secretary refused to further consider petitioners' applications until such time as they filed the required affidavits. The scholars, the courts, the Chief Executive, and the Attorney General all agreed that the issuance of passports had for years been a "discretionary act" on the part of the State Department. The Supreme Court decided that in order for the Secretary to deny a passport to a Communist whose travel abroad would be inimical to our national security, Congress must so provide in explicit terms. The Court once again had construed very narrowly the delegated power to curtail or dilute substantial and fundamental rights.

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Government counsel seem to say in their briefs that their investigation is so very important that this Court should not hold that the traditional safeguards should be afforded the registrars. We in no way disagree with counsel for the government concerning the value they place on the precious right to vote. But search as we have, we find nothing inimical to the government's interest in giving to the registrars the rights they insist upon here. The ultimate goal of Congress in creating the Commission was to find out all of the facts—the truth, not just possibly prejudiced opinion—so as to be able to safeguard the free exercise of the voting right, subject to the legitimate power of the state to prescribe non-discriminatory and fair voting qualifications. Often in cases of this nature the Court must balance between individual and governmental interests. Here, we examine the record for that purpose and find no conflict. No better procedure exists for finding out the truth than to give the accused notice of the case against him and full opportunity to meet it. Hearings so conducted generate a feeling, so vital in a popular government, that justice is being done.

We have dealt at length with the immediate and irreparable damage that would be caused the registrars by forcing them to proceed without giving them their basic and traditional rights. No good purpose would be served by reviewing that phase of the case. Suffice it to say that we stand on what we have said and we agree with Judge Dawkins' original opinion—that these registrars are faced with immediate and irreparable injury. What damage, what injury, will the Commission suffer by giving to these registrars their traditional safeguards of due process of law, and by affording them
607 the tenets of natural justice? In our humble opinion, all the Commission will suffer is perhaps a little inconvenience. It may take them three days rather than one to get the facts. How best can they perform the major task of "finding out all the facts" than to give the persons investigated the basic legal safeguards. We have searched in vain throughout the extensive briefs filed by the government in an effort to find out what irreparable damage, or what damage at all, could be done the Commission by prohibiting them from holding a hearing pursuant to these "ultra vires" rules and resolutions.

We do find in various parts of the government's briefs several statements or intimations as to damage. It was suggested that irreparable damage will be suffered because the Commission will expire in November. The recent action of Congress in extending the life of the Commission dispels this argument.

The government also suggests that if copies of the accusations and the names of the accusers were furnished the registrars it might result in the accusers being prosecuted for perjury. That is a strange argument—if one person makes a written allegation under oath that another has committed a crime and this oath turns out to be untrue, the public interest does not require that the government protect the perjurer. The government also argues that the Court should take judicial notice of the possible pressure to which persons making complaints in this field are subject under present circumstances. This Court does not know of a single instance where any such pressure has actually been brought. Some honest, sincere, and well-meaning people really believe this, but we are not going to assume (in the total absence of evidence) that the people of this State will be guilty of such a practice. Finally, the government argues that there is no point in telling these people what they did because they are the registrars and they *know* what they did. This contention assumes the reg-
608 istrars' guilt, an assumption which itself does violence to the American concept of justice—that all persons accused of crime are presumed to be innocent until proven guilty by competent evidence.

Insofar as the right of cross-examination is concerned, the government offers no reason why this should be denied. They merely say that they do not have to give it because congressional committees do not, and that Congress did not intend them to do it.

The Commission has authority to hold public hearings on vital public issues. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult questions facing our country. Such a study, such an investigation, fairly conducted, will tend to unite responsible people in a common effort to solve these problems. Investigation and hearings will bring into proper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a

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course of progress to guide us in the years ahead, but a fact finding investigation conducted as this one is proposed to be conducted can result only in misunderstanding, suspicion, hostility, and unneeded bitterness.

Natural justice would not require confrontation, apprisal, and cross-examination in every hearing of the Commission, but only in instances where, as here, the record makes it abundantly clear that those being investigated are accused and suspected of criminal conduct.

Believing as we do that the procedures and the rules of the Commission in the particulars heretofore discussed are ultra vires and threaten the registrars with immediate and irreparable damage, and believing further that the interests of the government, the public, and the Commission will best be served by the holding of a full and fair hearing wherein all ac-
609 cused of crimes are given a fair chance to develop all the facts, we have but one course to take—that is to dismiss the government's motion for summary judgment and grant the prayer for an injunction, in accordance with this opinion.

It is so ordered on this the 6th day of October, 1950.

JOHN MINOR WISDOM, Circuit Judge (dissenting).

610 *Dissenting opinion*

WISDOM, Dissenting:

I concur in the holding that the Act is constitutional and that the Administrative Procedure Act is inapplicable. I feel compelled, however, to dissent from the holding that under Greene v. McElroy the rules of the Commission are ultra vires.

I

The Commission's rules may be inadequate, in terms of traditional safeguards accorded a defendant in a criminal trial, but they are the rules Congress authorized for hearings by the Civil Rights Commission.

This case differs radically from Greene v. McElroy. Here, Congress took pains to set out in the Act, in its delegation of authority, mandatory rules of procedure to be followed by the Commission. The Commission's rules follow the language of the statute or are based on the intent of the statute.[1] Thus, on the important issue of the right of cross-examination, the Commission rule provides: "Interrogation of witnesses at

Footnotes to dissenting opinion appear on page 265.

hearings shall be conducted only by authorized staff personnel." [2] This is based on the statutory provision, Section 102 (c): "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights." The limitation of the activities of a lawyer to giving advice to his client, is just a way of saying that the lawyer (or his client) cannot cross-examine an adverse witness.

A central issue in the controversy over civil rights legislation was whether witnesses should have the traditional safeguards of notice, confrontation, and cross-examination. The 1956 Civil Rights Bill, H.R. 627, as reported by the House Judiciary Committee, contained no special rules of procedure. H. Rep. No. 2187, 84 Cong. 2d Sess. It was amended on the floor of the House by the addition of elaborate safeguards which Representative Dies of Texas proposed. 102 Cong. Rec. 13542, 13548. This amendment required notice of the subject of the inquiry and confrontation, and allowed limited cross-examina-
611 tion. The bill passed the House, but no action was taken on it in the Senate. In 1957 several bills were introduced containing the same procedural provisions as the 1956 bill, as amended. One of these was S. 83, the subject of Senate hearings in 1957.[3] The position of the Department of Justice, as stated by the Attorney General, was that "it would be a mistake to make it the vehicle for experimenting with new rules". Hearings, Senate Judiciary Committee, 85 Cong., 1st Sess., p. 14. In the House hearings on the 1957 Civil Rights proposal Senator, then Representative, Keating asked Attorney General Brownell if the Department would object to the Committee inserting in the bill a provision "similar to those set up in the rules of the House for the conduct of congressional committees". General Brownell stated that the Department had no objection to such rules of procedure. H.R. 6127, adopted into law as the Civil Rights Act of 1957, incorporated the House "Fair Play Rules" [4] as Section 102 of the Act.[5]

The action of Congress in refusing to adopt a particular bill and adoption of another bill is often an unreliable guide to congressional intent. But the circumstances in which H.R. 6127 became law, rather than S. 83 or H.R. 627, make it clear that Congress, after careful deliberation, made a choice of procedures. Congress rejected the traditional safeguards accorded a

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defendant in a criminal trial and accepted the House "Fair Play Rules".

The House "Fair Play Rules" were drawn for the conduct of congressional investigating committees. They were the indirect product of innumerable legal articles, judicial dicta, and editorials.[6] They were the direct product of careful study.[7] It is safe to say that when the House "Fair Play Rules" were adopted as Section 102 of the Civil Rights Act of 1957 every member of the House and Senate regarded that action as an explicit declaration that Congress affirmatively rejected rules extending to witnesses the rights of notice, confrontation, and cross-examination; that, instead, Congress authorized and directed the Civil Rights Commission to follow its more limited "Fair Play Rules".

This background distinguishes the case from Greene v. McElroy. There, the majority's reasoning was the President and Congress would not have delegated to the Department of Defense the power to deprive a man of his job as a result of a hearing in which he has no right of confrontation or
612 cross-examination, without including in the delegation express authorization to by-pass the traditional due process safeguards. Here, Congress expressly authorized the by-pass.

II

I therefore reach the issue of the constitutionality of the procedure.

A hearing subjecting a subpoenaed witness to public opprobrium, loss of reputation, loss of a job, and possible state and federal prosecution based on testimony brought out at the hearing, carries sanctions no less severe than a criminal trial. Fundamental fairness would seem to require that such a witness have the opportunity to assert the rights of notice, confrontation, cross-examination, and other due process safeguards. No court however has gone that far.

Mr. Justice Clark, the only member of the Supreme Court who reached the constitutional issue in Greene, stated: "[T]he Court has long ago and repeatedly approved administrative action where the right of cross-examination and confrontation were not permitted." Without exception, the courts have drawn a distinction between investigative and adjudicative proceedings. Witnesses in investigative hearings do not have

the constitutional rights of a witness in an adjudicative hearing. The Fifth Amendment gives a witness protection in an investigation; the opportunity to assert all due process rights in any later adjudicative proceeding is a sufficient protection.[8] In re Groban, 1957, 352 U.S. 330, 77 S. Ct. 510, 1 L. Ed. 2d 376; Bowles v. Baer, 7 Cir., 1954, 142 F. 2d 787. Norwegian Nitrogen Prod. Co. v. United States, 1932, 288 U.S. 294, 53 S. Ct. 350, 77 L Ed. 796.

In Groban a majority of the Supreme Court went very far indeed in denying the right to counsel. An Ohio statute, authorizing the State Fire Marshal to investigate the cause of fires, conferred broad powers on the investigating officer. He could hold the investigation in private, exclude counsel, punish witnesses who refuse to testify by summarily committing them to jail, and, if he believed the evidence would warrant a conviction for arson or a similar crime, he could arrest the witness after the investigation. The appellants, who were called upon to testify concerning the cause of a fire at their place of business, refused to testify in the absence of counsel. They
613 were committed to jail. In a habeas corpus proceeding, they contended that they had a constitutional right to counsel under the due process clause of the fourteenth amendment. The court held, five to four, that appellants had no constitutional right to counsel in giving testimony before an investigative body that does not adjudicate legal rights and responsibilities. If Groban was not entitled to due process, no witness is entitled to due process in an investigation.

Taking the law as it is, the Commission's rules are constitutional.

III

The rub in this case comes from the Act itself. It comes from the incongruity of a legislative commission of inquiry investigating specific complaints against individuals accused of crimes.[9] To my mind, the creation of such a commission is of questionable legislative propriety, at best. It carries grave danger of legislative usurpation, at worst.

The investigation of specific violations of the law is for grand juries, not legislative commissions. With all deference to Congress, a commission, constituted to investigate a broad problem of national interest, has no business holding hearings that must inevitably develop into legislative trials of individ-

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uals. When a subpoenaed witness accused of a crime may be subjected to trial by exposure, a fact-finding determination and punishment, he should have the same rights of notice, confrontation, and cross-examination, and all the other hard-earned rights embodied in due process, that any one accused of breaking the law is entitled to when he is tried by a jury before a judge. The Commission does not formally adjudicate guilt or impose a formal sentence, but an individual against whom a complaint is made to the Commission may be exposed to all the hardships of a trial and to punishment in many forms.

The House "Fair Play Rules" are a step in the proper direction—for congressional committees. Procedures suitable for Congress' own committees, however, are less than adequate for a trial by an autonomous commission to which Congress has delegated its power of inquiry.

The high purposes animating the creation of the Civil Rights Commission do not diminish the inherent dangers in legislative trials. They simply obscure the dangerous means used to attain the ends of the legislation.

These, however, are considerations for Congress.[10] On
614 the law, unless the minority view in Groban should prevail, the Act is constitutional, the rules authorized.

615 *Footnotes to dissenting opinion*

[1] See Appendix A and Appendix B.

[2] This is the rule universally followed by committees of the House and Senate. It permits a form of cross-examination: submission of written questions to be put to the witness by the Chairman—for whatever that is worth as cross-examination.

[3] See Appendix C.

[4] Amendment to Rule XI(25) of the Rules of the House of Representatives. Adopted March 23, 1955, 101 Cong. Rec. 3569–85; House Resolution 151, Rules and Manual, United States House of Representatives, 1959, section 735(1)–(q).

[5] Section 102(a) through 102(i) of the statute is identical with the House "Fair Play Rules".

[6] For a discussion of the various proposals for a code of procedure before congressional committees, see Maslow, Fair Procedure in Congressional Investigations: A Proposed Code, 54 Cal. L. Rev. 839 (1954). For the code proposed by the American Bar Association, see 40 Am. Bar Ass'n Journ. 900 (1954). See the following, some before and some after adoption of the Fair Play Rules, some dealing directly with the procedure before congressional committees and some dealing with the rights of witnesses generally in hearings before investigative or administrative bodies: Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev.

153 (1926); Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. Rev. 691 (1926); Herweitz and Mulligan, The Legislative Investigating Committee, 33 Cal. L. Rev. 1 (1933); Morgan, Congressional Investigations and Judicial Review; Kilbourn & Thompson Revisited, 37 Cal. L. Rev. 556 (1949); Davis, The Requirement of Opportunity to be Heard in the Administrative Process, 51 Yale L. Journ. 1091 (1942); Llacos, Rights of Witnesses Before Congressional Committees, 33 Bos. U. L. Rev. 337 (1953)); Symposium on Legislative Investigations: Safeguards of Witnesses, 29 Notre Dame Law., 157 (1954); Keating, The Investigating Power of Congress, 14 Fed. Bar Jour. 171 (1954); Kefauver, A Code of Conduct for Congressional Investigations, 8 Ark. L. Rev. 369 (1954); Chase, Improving Congressional Investigations, 30 Temp. L. Q. 126 (1957); Davis, Requirements of a Trial-Type Hearing, 70 Harv. L. Rev. 193 (1956); McKay, The Right of Confrontation, Wash. U. L. Q. 122 (1959). See the following recent notes and comments: Due Process and the Right to Counsel, 33 St. John's L. Rev. 67 (1957); The Civil Rights Act of 1957 and Contempt of Court, 48 Cornell L. Q. 661 (1958); Constitutional Limitations on the Legislative Power of Investigations, 7 Buffalo L. Rev. 267 (1958); Representation by Counsel, 58 Cal. L. Rev. 395 (1958). See also Barth, Government by Investigation (Viking Press, N.Y. 1955) and Taylor, Grand Inquest (Simon & Schuster, N.Y. 1955).

[7] In 1954 both houses of Congress held extensive hearings on the matter of committee procedures. Hearings before the Subcommittee on Legislative Procedure of the House Rules Committee, Legislative Procedure, 83d Cong., 2d Sess. (1954); Hearings before the Subcommittee on Rules of the Senate Rules and Administration Committee, Rules of Procedure for Senate Investigating Committees, 83d Cong., 2d Sess. (1954). See also Report of Senate Committee on Rules and Administration to accompany S. Res. 17, Rules of Procedure for Senate Investigating Committees, 84th Cong., 1955.

[8] Proponents of the legislation emphasized repeatedly: "The Commission created by the proposal is purely investigatory and empowered only to make recommendations". H. Rep. No. 291, 85th Cong. 1st Sess., p. 6.

[9] Section 104(a)(1) of the Act (Duties of the Commission) provides: "The Commission shall—(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

[10] The inclusion in the body of the statute of mandatory rules of procedure is unique in legislation setting up an investigatory commission. This, and the provision requiring application to a court for enforcement of process indicate congressional sensitivity to the problem.

616 APPENDIX A

Rules of Procedure of the Commission

Sec. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

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(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness

upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

617 (k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

APPENDIX B

In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85–315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 105(f) of Public Law 85–315, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission or of any subcommittee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at which at least a quorum of four members is present.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission by the Chairman or by the Chairman upon the request of a member of the Commission.

(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased

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by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission
618 members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

APPENDIX C (S. 83)

Rights of Persons Adversely Affected by Testimony

(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public

hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by

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the Commission to disclose his sources of information, unless to do so would endanger the national security.

620 In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Order on opinion

Nov. 9, 1959

[File endorsement omitted.]

For reasons assigned in the Court's written opinion of October 6, 1959,

It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiff registrars, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

This injunction does not prohibit all hearings pursuant to Public Law 85–315, 85th Congress, 42 U.S.C.A. 1975, et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

Thus done and signed in Chambers on this the 9 day of November, 1959.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.
Edwin F. Hunter, Jr.,
EDWIN F. HUNTER, Jr.,
United States District Judge.

621 In the United States District Court for the Western District of Louisiana

Civil Action No. 7479

MARGARET M. LARCHE, ET AL., PLAINTIFFS

v.

JOHN A. HANNAH, ET AL., DEFENDANTS

Notice of appeal to the Supreme Court of the United States

Filed Nov. 12, 1959

[File endorsement omitted.]

I

Notice is herey given that John Hannah, et al., the defendants above named, hereby appeal to the Supreme Court of the United States from the order granting an injunction, entered in this action on November 9, 1959.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II

The Clerk will please prepare a transcript of the entire record in this cause, for transmission to the Clerk of the Supreme Court of the United States.

III

The following questions are presented by this appeal:

1. Whether voting registrars subpoenaed to appear as witnesses at a hearing of the Commission on Civil Rights have a statutory or constitutional right (a) to conduct their own interrogation of other witnesses at the hearing or (b) to receive advance notice of (1) the names of persons who had allegedly asserted to the Commission that the registrars had deprived others of the right to vote on account of race or color, and (2) the contents of such assertions.

622 2. Whether appellees' complaint sufficiently alleged a legally cognizable irreparable injury or threat of irreparable injury so as properly to invoke the equitable power of the District Court to grant injunctive relief.

3. Where Commission subpoenas could be enforced against appellees only through application by the Attorney General

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to a District Court for an enforcement order under section 105(g) of the Civil Rights Act of 1957, 42 U.S.C. 1975d(g), and no application for enforcement had been made, whether appellees' suit for injunctive relief was premature.

4. Whether the Civil Rights Act of 1957, 42 U.S.C. 1975a *et seq.*, and the Rules of the Commission, provided appellees with an administrative remedy which rendered their suit for injunctive relief premature.

Joseph M. F. Ryan, Jr.,
JOSEPH M. F. RYAN, Jr.,
Acting Assistant Attorney General,
T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney,
Attorneys for John A. Hannah, et al.,
Appellants.

[Certificate of service omitted in printing.]

624 *Docket*

Card Index 7479

Shreveport, title of case	Attorneys
MRS. MARGARET M. LARCHE, Individually and in her capacity as REGISTRAR OF VOTERS in and for the Parish of Morehouse, et al* (*& 16 other Parish Registrars).	For Plaintiff: See Attached Sheet.
2 VS.	
JOHN A. HANNAH, Individually and as a member of the COMMISSION ON CIVIL RIGHTS, et al* (& the 5 other members thereof).	For Defendant: See Attached Sheet.
T. 28, Secs. 1331, 1332, 2282, 2284 USC & T. 42 Sec. 1985 USC & Sec. 2201. Basis of action: Suit for Declaratory judgment that Public Law 85-315, 85th Congress is unconstitutional; & for restraining order & injunction, temporary & permanent, enjoining Commission from holding hearing & requiring production of documents; & NJ for constitution of 3 Judge Court.	

Date	Plaintiff's account	Received	Disbursed
1959			
7-10	Jack P. F. Gremillion	$15.00	
7-16	Treas of US T-3		$15.00

Abstract of costs

To whom due	Amount
1959	
7-10, Clerk's	$15.00
7-13, USM	9.00
7-17, USM	7.20
7-22, USM	2.00
8-27, USM	2.00
11-12, Notice of Appeal	5.00

625

1959 *Shreveport*

7–10—Original complaint with attached exhibits, filed.

7–10—Original summonses (6), with copies for service, issued.

7–10—This case & No. 7480 came on for hearing on applications by plaintiffs for temporary restraining orders, counsel for defendants having only a few minutes before received copies of the cases, it was ordered that Court recess for one and one half hours. At 3:30 PM, hearing was resumed, applications for temporary restraining orders argued, orally, brief filed on behalf of defendants and taken under advisement. The Court announced that a ruling would be made on the afternoon of July 12, 1959.

7–12—Memorandum of authorities supporting issuance of temporary restraining order and/or temporary injunction, filed. (Also applies to No. 7480).

7–12—Pretrial Exhibits & pertinent statutory provisions & Pltfs'. Pretrial Brief filed.

7–12—Opinion of Judge Dawkins granting applications for temporary restraining orders, filed; together with temporary restraining order enjoining defendants from holding hearings, etc. & directing them to show cause at Shreveport, La. on 7–22–59 at 9:30 a.m. why a preliminary or interlocutory injunction should not be granted.

7–12—Writs of temporary restraining order & rules to show cause, with copies for service & attached copy of restraining order, issued & delivered to Marshal.

7–12—Four copies of 7–12–59 opinion delivered to Mr. Bernhard for the Commission & to Mr. Lassiter for plaintiffs in No. 7479; and one copy delivered to Mr. Shaw for plaintiffs in No. 7480.

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7–12—Entire record delivered to Judge Dawkins at his request. Clerk advised that record was being sent to Judge Joseph C. Hutcheson.

7–13—Marshal's return on summonses, (6) filed: Robert C. Storey served in person on 7–10–59; Other five summonses returned unexecuted—See returns for details.

7–13—Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Robert G. Storey, John S. Battle & George M. Johnson each served in person on 7–12–59.

7–14—It was ordered that T. Fitzhugh Wilson & others be enrolled as counsel for Defts; & on motion of Berl I. Bernhard, it was ordered that he be withdrawn as counsel for defendants. Counsel for defendants moved orally to require plaintiffs to post a $10,000.00 bond in connection with the issuance of a temporary restraining order, brief by plaintiffs in opposition thereto filed, oral testimony adduced, submitted and ordered that application for bond be denied as to each case. (BCDJF)

7–15—Order of Joseph C. Hutcheson Jr., Chief Judge, Fifth Circuit, appointing John M. Wisdom, & Edwin F. Hunter, Jr. to serve with Judge Dawkins, Jr. as a Three Judge Court, filed. Certified copies thereof mailed by Judge Dawkins to Judges Wisdom & Hunter.

7–17—Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Rev. Theodore S. Hesburg, Doyle E. Carlton, and John A. Hannah, each served 7–13–59.

7–17—Telegram from Atty. Gen. State of Arkansas, and Judge Dawkin's reply thereto granting him permission to file amicus curiae brief, filed.

7–22—Motion by Pltfs. & order continuing in force & effect temporary restraining order to 9:30 AM 8–1–59, as well as the rule to show cause, which is continued to 8–7–59 at 9:30 A.M., filed. Certified copy thereof delivered to Marshall to be served on U.S. Attorney.

7–22—Marshal's return on service of 7–22–59 order filed: Defts. served thru US Atty. on 7–22–59.

7-28—Memorandum by plaintiffs outlining questions & scope of inquiry which the three Judge Court is authorized to consider and dispose of, filed. Copies thereof mailed by Clerk to Judge Wisdom & Judge Hunter.

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7-29—Carbon copy of stipulation in and between complainants and defendants, filed with Clerk by counsel for plaintiffs.

7-29—Trial Brief on behalf of complainants, filed. Signed copy thereof mailed by Clerk to Judges Wisdom & Hunter.

7-30—Court Reporter's Transcripts of Precedings (2 documents) of July 10 and July 13, 1959, filed.

7-31—Motion by Pltfs. & order continuing in force & effect temporary restraining order to 9:30 AM 8-7-59, filed. (BCDJR) Certified copy thereof delivered to Marshal for service on U.S. Attorney.

7-31—Defendants' answer to plaintiff's complaint and the Rule to Show Cause filed. Copy thereof mailed to Judges Wisdom & Hunter.

7-31—Defendants' brief in support of answer to Rule to Show Cause, filed. Copy thereof mailed to Judges Wisdom & Hunter.

8-1—Affidavits of nine (9) Registrar plaintiffs and affidavit of Jack P. F. Gremillion, with attached exhibits filed by plaintiffs in support of their motion for preliminary injunction. Copies thereof mailed to Judge Wisdom & Judge Hunter.

8-4—Brief of the Attorney General of Arkansas, Amicus Curiae, filed. Copies thereof mailed by Clerk to Judges Wisdom & Hunter.

8-5—Affidavits of six (6) Registrar plaintiffs filed on behalf plaintiffs in support of their motion for preliminary injunction. Copies thereof mailed to Judge Wisdom & Judge Hunter.

8-7—Stipulation in and between complainants and defendants, signed by counsel for each side, with attached exhibits, filed. Copies thereof delivered to Judges Wisdom & Hunter.

8-7—This case & No. 7480 Came on for hearing on Rule to Show Cause Why A Preliminary Injunction should not issue; on motion by Deft. for summary judgment

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in No. 7480; as well as trial on the merits as to each case, on the question of constitutionality; No. 7479 being heard and tried by the Three Judge Court and No. 7480 being heard and tried by Judge Dawkins, Jr., only. Counsel for plaintiffs filed three separate briefs. The Court announced that, by agreement of counsel, the restraining orders will lapse at the end of this hearing, the Govt. having agreed that the Commission will not attempt to have any hearing on Louisiana matters until decision is handed down in this case. Oral stipulation was dictated into the Record, as to Case No. 7479; and a written stipulation was filed by and between counsel in No. 7480. Counsel for Pltf. filed in evidence the entire record as thus made up. Oral argument was had after which it was ordered that both cases be submitted and taken under advisement on briefs to be filed by each side within 10 days. (JMW: EFHJR: BCDJR)

8–14—Legislative History Material received by Clerk from counsel for defendants. Duplicate copies thereof mailed by Clerk to Judges Hunter and Wisdom.

8–14—Defendants' supplemental memorandum, filed. Copies thereof mailed by Clerk to Judges Wisdow & Hunter.

8–15—Plaintiffs' post argument brief, requested by the Court, filed. Copies thereof mailed to Judges Wisdom & Hunter.

8–17—Entire record and docket sheet delivered to Judge Dawkins.

8–18—Supplemental brief amicus curiae filed on behalf of the Attorney General of Arkansas. Copies thereof mailed to Judges Wisdom & Hunter. Original given to Judge Dawkins.

8–26—Court Reporter's transcript of 8–7–59 proceedings filed.

8–27—Marshal's return on Motion by plaintiff to continue in effect rest. order served July 31, 1959 at 10:15 A.M., on T. F. Wilson, U.S. Attorney.

627

10–7—Opinions (majority and dissenting) of Three Judge Court, as follows, filed: Majority (Hunter & Dawkins) dismissing Govt's. motion for summary judgment and granting prayer for an injunction in ac-

cordance therewith; Dissenting Opinion: (Wisdom) Holding that the Act & the Commission's rules are constitutional. Copies thereof mailed to U.S. Attorney and to Atty. Gen. of State of La. by Judge Hunter.

11-9—Judgment signed by Ben C. Dawkins, Jr. and Edwin F. Hunter, Jr. in accordance with majority opinion filed 10-7-59 enjoining and restraining Defts., agents, etc. from conducting the proposed hearing in Shreveport, La., filed. Notice of entry given to counsel for each side thru US Attorney and Attorney General of State of Louisiana in the form of a certified copy of said judgment.

11-12—Defendants' Notice of Appeal which contains designation of record on appeal and statement of questions presented by said appeal, filed.

11-18—Request by counsel for defendants in letter from, dated November 17, 1959, that Clerk of this Court transmit to Clerk of Supreme Court the original of the record in this case, filed.

11-19—Motion by defendants for an order directing that the original record be transmitted to the Supreme Court in lieu of copies, filed.

11-19—Order of Court granting motion filed by defendants this date re transmission of original record, filed. (BCDJR)

628 PLAINTIFFS ATTORNEYS

Jack P. F. Gremillion, Attorney General, State of La., 2201 State Capitol, Baton Rouge, La; George M. Ponder, 1st Asst. Atty. Gen., State of La., 2201 State Capitol, Baton Rouge, La.; M. E. Culligan, New Supreme Court Bldg., New Orleans, La.; John E. Jackson, New Supreme Court Bldg., New Orleans, La.; William P. Schuler, New Supreme Court Bldg., New Orleans, La.; N. Cleburn Dalton, 140 St. Louis St., Baton Rouge, La.; W. Scott Wilkinson, Beck Bldg., Shreveport, La.; Frank J. Looney, Sr., Shreveport, La.; Louis H. Padgett, Bossier City, La.; Albin P. Lassiter, Ouachita Parish Courthouse, Monroe, La.; Fred Jackson, Homer, La.; William Shaw, Homer, La., Attorney for Mrs. L. L. Linton; Thompson L. Clarke, St. Joseph, La.; Cameron C. Minard, Columbia, La.; Lester Hughes, Natchitoches, La.; Richard N. Kilbourne, Clinton, La.; France Watts, Franklinton, La.; J. Ruel Boone, Many, La.; Ferdinand A. Cashio, 1313 Centenary Boulevard, Shreveport, La.; Ragan Madden, District Attorney, Ruston, La.; Edwin L. Blewer, District Attorney, Caddo Parish, Shreveport, La.

For amicus curiae: Bruce Bennett, Attorney, State of Arkansas, Little Rock, Ark.

629 DEFENDANT'S ATTORNEYS

C. E. Clark, Legal Assistant to Hon. Robert G. Storey, Vice-Chairman, Commission on Civil Rights, Washington, D.C.; Gordon M. Tiffany, Director, Commission on Civil Rights; A. William Mottolese, Staff Director, Commission on Civil Rights; T. Fitzhugh Wilson, U.S. Attorney, Box 33, Shreveport, La., for the Commission and each of its individual members; Ben Brooks; D. Robert Owen; A. Wilson White, Asst. Atty. Gen., Washington, D.C.; Joseph M. F. Ryan, Jr., Actg. Asst. Atty. Gen., Civil Rights Division, Dept. of Justice, Washington 25, D.C.

630 In the United States District Court for the Western District of Louisiana, Shreveport Division

[File endorsement omitted.]
[Title omitted.]

Motion for an order directing that the original record be transmitted to the Supreme Court in lieu of copies

Filed Nov. 19, 1959

Defendants in this cause hereby respectfully move this Court to enter an order directing the original record to be transmitted to the Supreme Court in lieu of copies.

As reasons for this motion defendants show as follows:

1. Defendants have noted an appeal from the order entered November 9, 1959, and have designated the entire record for transmission to the Supreme Court. The record is voluminous, and preparation of copies would be time-consuming and would entail considerable effort and expense.

2. Defendants intend to take all steps necessary to expedite the hearing of this case in the Supreme Court. Because of the Civil Rights Commission's limited life, the issues should be resolved by that Court as quickly as possible.

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3. Under Rule 12(4) of the Revised Rules of the Supreme Court, 28 U.S.C., the original papers may be inspected by the Supreme Court in lieu of copies, if the presiding judge deems such inspection "necessary or proper". For reasons hereinbefore stated, such inspection is "necessary" and "proper".

Joseph M. F. Ryan, Jr., D.K.,
JOSEPH M. F. RYAN, Jr.,
Acting Assistant Attorney General,
Civil Rights Division,
Department of Justice, Washington, D.C.

631 T. Fitzhugh Wilson,
T. FITZHUGH WILSON,
United States Attorney,
Western District of Louisiana,
Shreveport, Louisiana.

[Certificate of service omitted in printing.]

632 In the United States District Court for the Western District of Louisiana, Shreveport Division

[File endorsement omitted.]
[Title omitted.]

Order directing transmittal of original record

Nov. 19, 1959

Appellants having designated the entire record in this case for use on appeal, and having filed with this Court a motion for an order directing that the original record be transmitted to the Supreme Court in lieu of copies, and it appearing to the Court that transmission of the original papers will avoid unnecessary expense and expenditure of time, the Clerk is hereby directed to transmit the original record to the Supreme Court in lieu of copies, such original record to be returned to this Court after disposition of the appeal.

Thus done and signed this 19th day of November, 1959, at Shreveport, Louisiana.

Ben C. Dawkins, Jr.,
BEN C. DAWKINS, Jr.,
United States District Judge.

633 [Clerk's certificate to foregoing transcript omitted in printing.]

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634 Supreme Court of the United States

Nos. 549 and 550, October Term, 1959

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.; AND JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

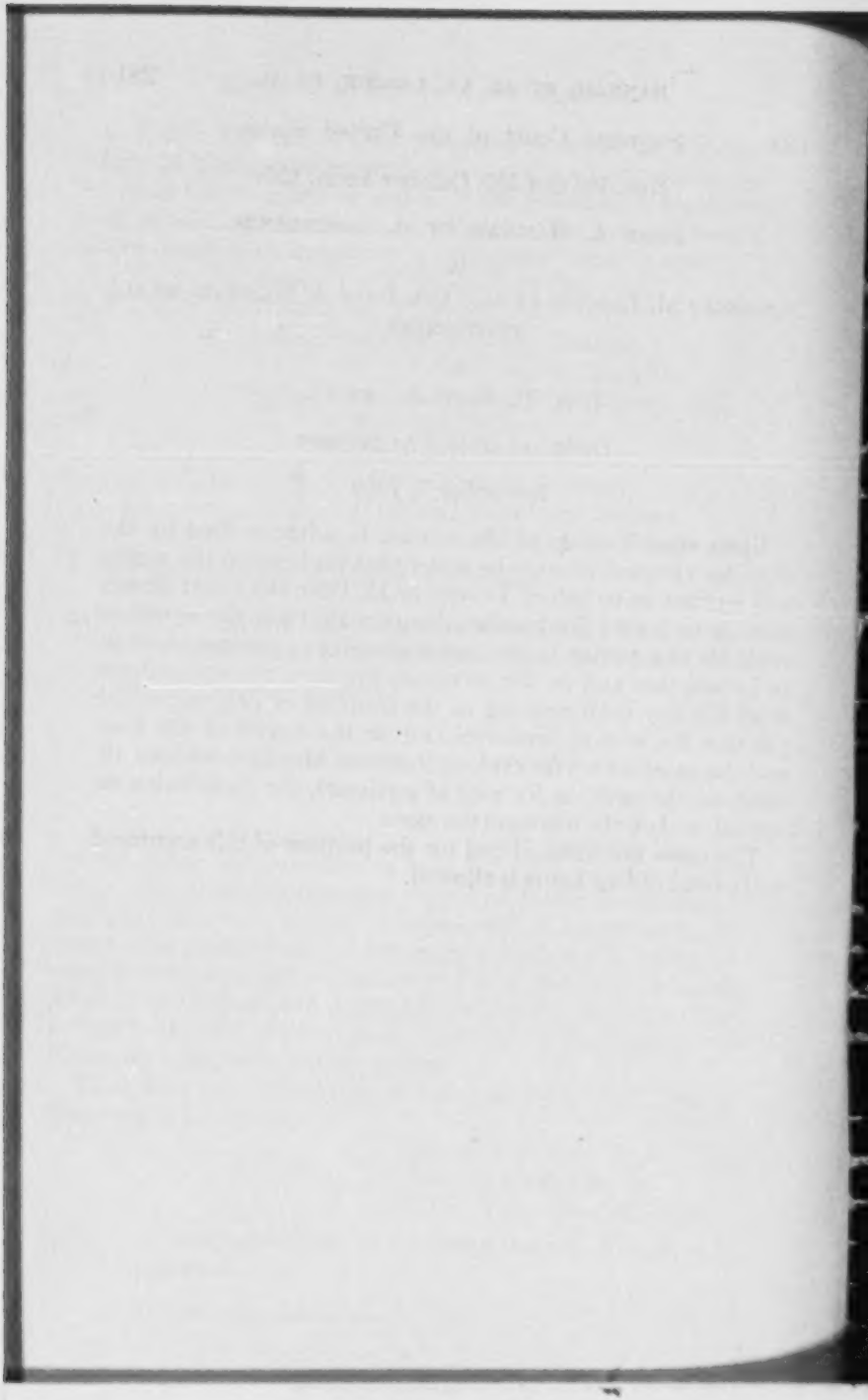
Order on motion to advance

December 7, 1959

Upon consideration of the motion to advance filed by the Solicitor General wherein he states that his brief on the merits will be filed on or before December 15, 1959, the Court directs that on or before Wednesday, January 13, 1960, the appellees shall file any motion or motions responsive to the statement as to jurisdiction and on the merits of the case, the respondents shall file any brief relating to the granting or denying of the petition for writ of certiorari and on the merits of the case, and the cases are set for oral argument on Monday, January 18, 1960, on the petition for writ of certiorari, the jurisdiction on appeal, and on the merits of the cases.

The cases are consolidated for the purpose of this argument and a total of four hours is allowed.

U.S. GOVERNMENT PRINTING OFFICE: 1959



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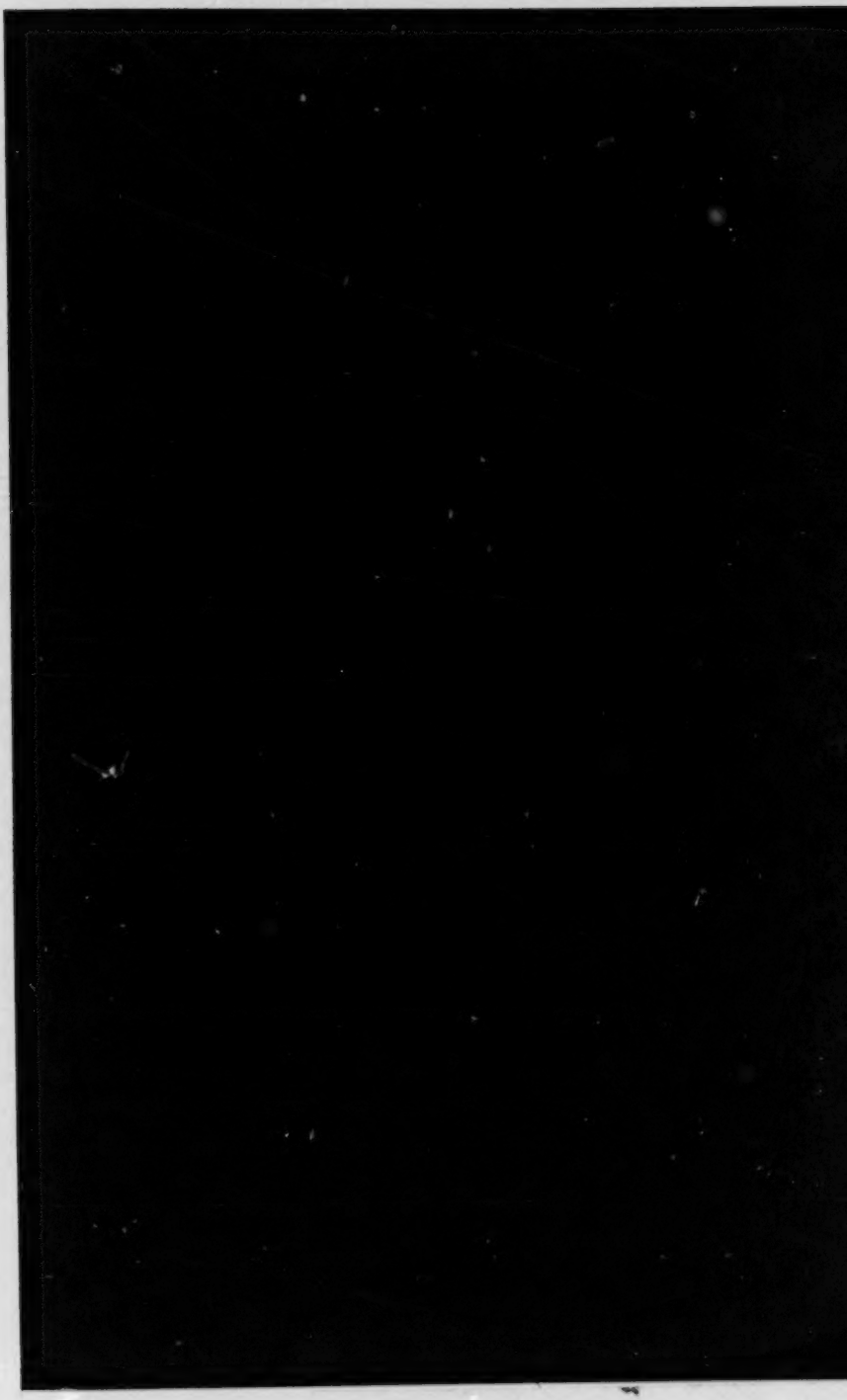

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. —

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Louisiana, which is not yet reported, is set forth in Appendix A, *infra*, pp. 14–47. A prior opinion of the District Court, granting appellees' application for a temporary restraining order, also unreported, is set forth in Appendix C, *infra*, pp. 50–68.

JURISDICTION

This action was instituted by appellees in the District Court for the Western District of Louisiana under 28 U.S.C. 1331 and 1332 to enjoin the conduct of a hearing scheduled by the Commission on Civil Rights and to declare unconstitutional

and unenforceable that portion of the Civil Rights Act of 1957 (42 U.S.C. 1975) which established the Commission.

On October 7, 1959, a three-judge court, convened pursuant to 28 U.S.C. 2282, filed an opinion holding that the Civil Rights Act was constitutional, but deciding that certain rules and procedures adopted by the Commission for the conduct of its investigations were unauthorized by the statute. On November 9, 1959, the court entered an order enjoining appellants from holding hearings in Louisiana under such rules and procedures. A notice of appeal to this Court was filed on November 12, 1959. The jurisdiction of this Court to review the decision of the District Court on direct appeal is conferred by 28 U.S.C. 1253.

STATUTORY PROVISIONS AND RULES INVOLVED

The Civil Rights Act of 1957 (P.L. 85–315, 71 Stat. 634, 42 U.S.C. 1975), as it appears in the United States Code, provides:

> § 1975. COMMISSION ON CIVIL RIGHTS.
>
> (a) *Establishment.*
>
> There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").
>
> * * * * *
>
> § 1975a. RULES OF PROCEDURE.
>
> (a) *Opening statement.*
>
> The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

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(b) *Copy of rules.*

A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) *Attendance of counsel.*

Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) *Censure and exclusion of counsel.*

The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) *Defamatory, degrading, or incriminating evidence.*

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) *Requests for additional witnesses.*

Except as provided in this section and section 1975(f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) *Release of evidence taken in executive session.*

No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the

consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) *Submission of written statements.*

In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) *Transcripts.*

Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) *Witness fees.*

A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

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(k) *Restriction on issuance of subpena.*

The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

* * * * *

§ 1975c. DUTIES; REPORTS; TERMINATION.

(a) The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957.

(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

§ 1975d. POWERS.

* * * * *

(f) *Hearings; issuance of subpenas.*

The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a (j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

The Rules of Procedure, adopted on July 1, 1958, by the Commission on Civil Rights, provide:

3. * * *

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

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(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

QUESTION PRESENTED

The Civil Rights Act of 1957 directs the Commission on Civil Rights to "investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin * * *."

The question presented is whether the District Court erred in enjoining the Commission from holding a scheduled hearing under the Act, where it appeared that (a) the plaintiffs are voting registrars who were subpoenaed to appear as witnesses at the

hearing; (b) the Commission, considering all complaints submitted to it as confidential, denied plaintiffs' request, in advance of the hearing, for the names of the complainants and the contents of their allegations; and (c) the Commission's Rules of Procedure governing hearings provide that interrogation of witnesses shall be conducted only by members of the Commission or its staff.

STATEMENT

On July 10, 1959, appellees, registrars of voters for certain parishes in Louisiana, who had been subpoenaed to appear at a hearing of the Commission on Civil Rights, and to bring to the hearing various voting and registration records within their custody and control, filed a complaint under 28 U.S.C. 1331 and 1332 in the District Court for the Western District of Louisiana against appellants, the members of the Commission on Civil Rights, to enjoin a hearing scheduled to be held in Shreveport, Louisiana, on July 13, 1959. This hearing had been scheduled by the Commission pursuant to the authority contained in section 104(a)(1) of the Civil Rights Act of 1957, 42 U.S.C. 1975c(a)(1), and had as its principal purpose the investigation of written allegations that certain citizens were being deprived of their right to vote on account of race or color. In advance of the hearing, appellees requested the Commission to furnish (a) the names of the persons who had made these allegations, and (b) copies of the affidavits which had been submitted by the complainants. This request was denied.

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Appellees contended that the Act creating the Commission did not constitute "appropriate legislation" within the meaning of Section (2) of the Fifteenth Amendment to the Constitution, and that the Commission was acting illegally in refusing to advise them of the nature of the allegations pursuant to which the hearing had been scheduled and in refusing to allow them to confront and cross-examine the persons making such allegations. The prayer for relief sought a temporary restraining order and a preliminary and a permanent injunction.

The District Court (Dawkins, J.) issued a temporary restraining order. Thereafter, inasmuch as the complaint sought an injunction restraining the operation of an Act of Congress as in violation of the Constitution, a three-judge court was convened pursuant to 28 U.S.C. 2282. After a hearing, the court held the Civil Rights Act of 1957 to be an appropriate exercise of legislative power under the Fourteenth and Fifteenth Amendments and under Article I of the Constitution. However, the court held, with Circuit Judge Wisdom dissenting, that the Commission's rules and procedures were not authorized by Congress and invalid. On November 9, 1959, the court entered an order enjoining the Commission from holding any hearings in the Western District of Louisiana in which the registrars, "accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination."[1]

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[1] The court's order (Appendix B, *infra*, pp. 48–49) does not specify whether the injunction is permanent or interlocutory. Judge Dawkins, in issuing the temporary restraining order, en-

THE QUESTION IS SUBSTANTIAL

1. One of the principal functions which Congress, in the Civil Rights Act of 1957, assigned to the Commission on Civil Rights is the investigation of allegations that certain citizens of the United States are being deprived of the right to vote because of their color, race, religion, or national origin. Congress expressly prescribed rules of procedure to be followed by the Commission at its hearings, and the Commission has also promulgated various implementing rules. (*Supra,* pp. 6–7.) The decision below, in holding basic provisions of the Commission's rules and procedures to be unauthorized and invalid, has brought to a halt the Commission's hearings in this important area. The Government believes that the decision below is manifestly erroneous and should promptly be set aside in order that the Commission, a body of limited life,[2] may proceed to carry out the mandate of Congress.

2. Although, strictly speaking, appellee registrars were merely subpoenaed to appear at the Commission's scheduled hearing and were "accused" of

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tered a rule to show cause why a preliminary injunction should not be issued. Argument was thereupon made to the three-judge court. The opinion of the three-judge court, however, decides the merits of the case. For this reason, and because the order of the three-judge court is unrestricted in terms and disposes of all issues, it would appear that the order is a permanent injunction. Whether the order is final or interlocutory, however, it is appealable to this Court under 28 U.S.C. 1253.

[2] By virtue of subsections (b) and (c) of section 104 of the Civil Rights Act, 42 U.S.C. 1975c (b) and (c), the Commission was to expire not later than November 8, 1959. The life of the Commission was extended for a further two-year period on September 28, 1959. P.L. 86–383, 73 Stat. 724.

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nothing, we may assume *arguendo,* as the District Court did, that the allegations of voting rights violations being investigated by the Commission concerned the appellees. It does not follow, however, that the hearing here may properly be analogized to a judicial determination of guilt or innocence in a criminal case. The District Court itself recognized that the Civil Rights Commission does not make adjudications. (App. A, *infra,* p. 16, fn. 3.) The Commission's function is limited to making a report of its findings, activities, and recommendations to Congress and the President. It has no authority to impose sanctions, to indict, to punish, or to deprive any person of life, liberty, or property. In this regard it functions solely as an investigative arm of the legislative and executive branches of government. Appellees are witnesses, not defendants; and the District Court plainly exceeded its authority in prohibiting the Commission from securing their testimony, and that of other witnesses at the scheduled hearing.

3. As demonstrated by Judge Wisdom in his dissenting opinion (App. A, *infra,* pp. 36–41), the rationale of *Greene* v. *McElroy,* 360 U.S. 474, is wholly inapplicable here because Congress, after full consideration, rejected the proposal that witnesses before the Commission should be accorded the traditional safeguards provided for defendants in criminal trials, *i.e.,* notice, confrontation, and cross-examination. Instead, as the legislative history detailed in Judge Wisdom's opinion shows, Congress specifically incorporated into the Civil Rights Act of 1957 the so-called "fair play" rules applicable

to proceedings conducted by committees of the House of Representatives. In addition to the materials cited by Judge Wisdom, we may note here that in the House debates on this bill Representative Celler, Chairman of the Judiciary Committee and a sponsor of the bill, asserted that the "fair play" rules afforded sufficient protection to witnesses (103 Cong. Rec. 8491). Senator Talmadge, on the other hand, levelled the same criticisms against those rules as are urged by appellees. He stated (103 Cong. Rec. 11503–11505):

> No provision is made for persons adversely affected by testimony taken by the Commission to be present when they are accused or later to confront and cross-examine their accusers.

4. There is no authority to support the contention made by appellees below, which the District Court found it unnecessary to reach, that the Constitution requires the Commission to furnish subpoenaed witnesses with advance notice of the identity of complainants and the contents of their allegations, and to provide witnesses the same opportunity for confrontation and cross-examination as is afforded defendants in criminal trials.[3] Congressional committees, administrative agencies, and executive commissions have

[3] Even in a federal criminal case the defendant has only a limited right of pre-trial discovery (Rules 16 and 17, Federal Rules of Criminal Procedure; cf. *Bowman Dairy Company* v. *United States*, 341 U.S. 214, 221), and is not normally entitled to pre-trial disclosure of the identity of informants and to obtain statements given by them to the Government. 18 U.S.C. 3500; *Palermo* v. *United States*, 360 U.S. 343; cf. *Scher* v. *United States*, 305 U.S. 251, 254; *Roviaro* v. *United States*, 353 U.S. 53, 59–61.

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customarily proceeded in their inquiries without being subject to such restrictions. The reason lies in the difference between adjudication and investigation. Thus, in *Norwegian Nitrogen Products Company* v. *United States,* 288 U.S. 294, 318, the Court, speaking through Mr. Justice Cardozo, stated:

> * * * the kind of order that emerges from a hearing before a body with power to ordain is one that impinges upon legal rights in a very different way from the report of a commission which merely investigates and advises. The traditionary forms of hearing appropriate to the one body are unknown to the other.

Cf. *McGrain* v. *Daugherty,* 273 U.S. 135; *In re Groban,* 352 U.S. 330.

CONCLUSION

For the reasons stated, probable jurisdiction should be noted and the case set down for an early hearing.[4]

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
JOSEPH M. F. RYAN, JR.,
Acting Assistant Attorney General.
HAROLD H. GREENE,
DAVID RUBIN,
Attorneys.

NOVEMBER 1959.

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[4] The Government is filing, with this Jurisdictional Statement, a motion to advance the Court's consideration of the appeal.

532336—59——2

APPENDIX A

In the United States District Court for the Western District of Louisiana, Shreveport Division

[Filed October 7, 1959]

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

vs.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

THREE-JUDGE COURT:

Judge JOHN MINOR WISDOM, *Circuit Judge;* Judge BEN C. DAWKINS, Jr., *Chief Judge;* Judge EDWIN F. HUNTER, Jr., *District Judge.*

HUNTER, Judge.

This case originated in the Shreveport Division of the Western District of Louisiana upon the filing of a complaint on July 10, 1959. Plaintiffs are registrars of voters in and for certain parishes in Louisiana.[1] The Commission on Civil Rights is a temporary agency of the United States, created by the Civil Rights Act of 1957, under Public Law 85–315, 85th Congress, U.S.C.A. 42:1975, et seq. The Com-

[1] Hereinafter referred to as "Registrars".

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mission scheduled a hearing for July 13, 1959, in Shreveport, Louisiana for the purpose of investigating allegations in writing (under oath or affirmation) that certain citizens were being deprived of their right to vote on account of race or color.[2] These allegations accuse the registrars, through their official acts, of having caused such deprivation, and summoned them to appear before the Commission. The subpoenas also required the registrars to produce for inspection various voting and registration records within their custody and control.

The suit is against the Commission and its members. Its declared object is to stay the effectiveness of the Commission subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing. The registrars insist they are entitled to this relief because the Commission is seeking to hold such hearing pursuant to rules of procedure which are ultra vires, and which deny to them traditional procedural safeguards. Moreover, the registrars assert that the rules of procedure adopted by the Commission violate their fundamental constitutional rights; and that the Act in its entirety is unconsti-

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[2] Under Section 104(a) of that Act the Commission is empowered and directed to: "(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based; * * *"

The Act also empowers the Commission, or any authorized subcommittee thereof, to hold such public hearings and act at such times and places as the Commission may deem advisable. Said Act also empowers the Commission to require the attendance and testimony of witnesses or the production of written or other matters.

tutional because it constitutes an unconstitutional delegation of power.[3]

Detailing their complaints, supported by sworn affidavits, the registrars allege that they were served with subpoenas and subpoenas duces tecum issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959; that they have not been informed of the nature of the complaints against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine, the written complaints filed against them, nor would it divulge the name or names of the secret complainants; that the rules under which the hearing is to be conducted specifically deny to registrars the right to cross-examine their accusers.[4]

On July 10, 1959, the case was heard by the Honorable Ben C. Dawkins, Jr., Chief Judge of the Western District of Louisiana. The matter was extensively argued and briefed. On July 12th Judge Dawkins granted a temporary restraining order and issued a rule on the Commission and its members to show cause why an interlocutory injunction should not issue. Judge Dawkins, in issuing the temporary re-

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[3] Registrars also contend that the procedural provisions of the Administrative Procedure Act should be applied. We cannot agree. The A.P.A. prescribes in section 7 (5 U.S.C. 1006), specific hearing procedures with respect to two processes; in section 4 (5 U.S.C. 1003) with respect to "rule making", and in section 5 (5 U.S.C. 1004) with respect to "adjudications." The Act contains no hearing requirements except where rule making or adjudications are involved. The Civil Rights Commission is performing neither function here.

[4] The truth of these facts is not contested.

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straining order, did not intimate any opinion as to the constitutionality of the statute itself.[5] This three-judge court was convened to consider the constitutional attack.

The principal object and purpose of a three-judge federal court is to decide the constitutional validity of the Act of Congress sought to be enjoined. But where other issues are presented, as they are here, they too should be decided. The parties readily agree that this is so and that all issues, both constitutional and non-constitutional, are before this court.[6]

THE CONSTITUTIONALITY OF THE ACT ITSELF

Complainants seek a declaratory judgment to the effect that the Act is unconstitutional because it is not appropriate legislation. Manifestly, this position cannot be sustained.

The Constitution and pertinent decisions of the Supreme Court make clear that Congress may, pursuant to power conferred upon it by Article 1 of the Constitution, legislate to secure the right to vote in federal elections. That power has been found in Article 1, Section 4. *Ex Parte Siebold,* 100 U.S. 371, 383 (1879); *Ex Parte Yarbrough,* 110 U.S. 651, 660 (1884); *United States* v. *Mosley,* 238 U.S. 383 (1915). It has been found in Article 1, Section 8, Clause 18, *Ex Parte Yarbrough, supra,* at page 658. It has been found in Article 1, Section 2, *United States* v. *Classic,* 313 U.S. 299, 316 (1941). And, as the Supreme Court noted in the *Classic* case, *supra,* at page 315:

> * * * since the constitutional command is without restriction or limitation, the right, unlike

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[5] Judge Dawkins' opinion is made a part hereof by reference.

[6] *California Water Supply Co.* v. *Redding,* 304 U.S. 252 (1938); *Davis* v. *Wallace,* 257 U.S. 478, 482 (1922); *Louisville and Nashville RR Co.* v. *Garrett,* 231 U.S. 298, 304 (1913).

those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of states.

It is equally clear that Congress may, pursuant to section 2 of the 15th Amendment, legislate to prevent states and their officials from denying qualified persons the right to vote on account of race, color, or previous condition of servitude (*Guinn* v. *U.S.*, 238 U.S. 347 (1915); *In re Wallace*, 170 F. Supp. 63 (1959)). Similarly, Congress may, pursuant to Section 5 of the 14th Amendment, legislate to prevent states and their officials from enacting or enforcing statutes which deny equal protection of the laws.

Since Congress may legislate pursuant to its constitutional powers, and since it may investigate those objects upon which it may legislate,[7] and since it may delegate its investigative function,[8] the issue of the constitutionality of the acts in creating the Commission rests solely on the question of whether the action of Congress was, in fact, an implementation of its constitutional powers. The stated purposes of the act, its fair reading, and its overwhelming legislative history are proof positive that Congress did create the Commission pursuant to its Article 1 power, as well as to its powers under Sections 5 and 2 of the 14th and 15th Amendments,[9] respectively.

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[7] *Watkins* v. *U.S.*, 354 U.S. 178 (1957).

[8] *Endicott Johnson Corp.* v. *Perkins*, 317 U.S. 501–510 (1943).

[9] (A) From the report of the House of Representatives Judiciary Committee (Report No. 291, 85th Congress, First Session) accompanying the bill which became, in pertinent part, the Civil Rights Act of 1957, it is manifest that Congress was legislating pursuant to its Article 1 power. Thus, that portion of the report designated "General Statement" notes:

"The Provisions of the Bill H.R. 6127 are designed to achieve a more effective enforcement of the rights already guaranteed

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We are mindful of the arguments repeatedly appearing in the registrars' brief to the effect that the power

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by the Constitution and laws of the United States. This is particularly true with regard to the right of franchise in federal matters." (At page 5.)

Similarly, the "General Statement" portion continues at page 6:

"With regard to the proposals involving the right to vote, the Federal Government has placed upon it by article 1, section 4, of the Constitution the authority to regulate the manner of conducting elections and that authority is further supplemented by the 14th and 15th amendments."

There is further evidence that throughout its deliberations Congress was conscious of its Article 1 power. A clear exercise of that power is illustrated by the enactment of the present subsection (b) of section 1971, Title 42. In authorizing the federal government to prevent certain types of conduct by individuals, its terms are carefully limited to federal elections. And, as the House Report, supra, makes clear (at pages 11–13), Congress rooted this provision in its Article 1 power.

Finally, the history of the terms of the Act which prescribe the duties of the Commission reveals that it was created pursuant to the Article 1 power. Section 104(a) directs that the Committee shall:

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote *and have that vote counted* * * *" [Emphasis supplied.]

The underscored language was inserted by the House after the bill came out of Committee. Representative Hoffman, favoring the amendment, regarded its inclusion as crucial since Supreme Court had held it to be an integral part of the right to vote in *United States* v. *Classic*, *supra* (103 Cong. Rec. App. 4716). Thus, the Commission was directed to investigate deprivations of an aspect of the right to vote which had been enunciated in a case which involved the Article 1 power of Congress.

(B) *The 14th Amendment.*—In the House debates Congressman Celler referred to the Act (103 Cong. Rec. 16088) as "* * * clear implementation of the 14th and 15th amendments."

granted to Congress to legislate is specifically limited by the Tenth Amendment. On its face the Tenth Amendment recognizes that certain powers are prohibited by the Constitution to the states, and therefore are not reserved to the states. One of these prohibitions is that no state may deny equal protection of its laws (14th Amendment). Another is that no state may deny the right to vote on account of race, color, or previous condition of servitude (15th Amendment). Still

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Similarly, in the words of the House Report, *supra*, at page 6:

"* * * the 14th amendment operates to prevent any State from enacting or enforcing a law which would abridge the privilege and immunity of a United States citizen and denying such a person the equal protection of the laws. *These two amendments expressly authorize Congress to enforce them by legislation.* [Emphasis supplied.]

"* * * the 14th and 15th amendments, both of which expressly confer upon the Congress the power to enforce them by appropriate regulations." (At page 13.)

Above all, the terms of the Act itself which relate to the Commission on Civil Rights demonstrate conclusively that Congress relied in part upon its powers under section 5 of the Fourteenth Amendment. By section 104(a) the Commission is directed to:

"(2) study and collect information concerning legal developments constituting *a denial of equal protection of the laws under the Constitution;* and [emphasis supplied]

"(3) appraise the laws and policies of the Federal Government *with respect to equal protection of the laws* under the Constitution." [Emphasis supplied.]

The inclusion by Congress of the underscored language manifests its reliance upon a concept found only in the 14th Amendment.

(C) *The 15th Amendment.*—For example, the statement of Senator Bush at 103 Congressional Record, 13138: "That is the central purpose of this bill: to give meaning to the 15th amendment of the Constitution of the United States." See also the statement of Representative Celler in the House debates at 103 Congressional Record 16088.

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another provision of the Constitution specifically gives to Congress the power to legislate to secure the right of qualified electors to vote in federal elections (article 1, sec. 2). So, we have here involved the very powers which the Constitution says are not reserved to the states. The action here is not an invasion of state power merely because state voting and registration records are involved. The congressional power is complete in itself and may be exercised to its full extent. The investigation of alleged discriminatory practices is an appropriate step in the process of enforcing and protecting the right of qualified electors [10] to vote. The Act very definitely constitutes appropriate legislation.

THE RULES OF THE COMMISSION

The remaining pertinent and serious questions presented may be thus stated:

(1) Did Congress, in creating the Commission, specifically authorize it to adopt rules for

[10] Under our constitutional system the qualification of voters is a matter committed to the states, subject to federal constitutional restraints prohibiting discrimination on account of race, color, sex, etc. But it is also true that the right of citizens to cast ballots, and have them counted in congressional elections, *in accordance with applicable state laws*, is a right secured by the federal constitution, and this right, unlike those carried by the 14th and 15th Amendments, is secured against the actions of individuals as well as states. Article 1, section 2 of the Constitution, in its provisions for the election of members of the House of Representatives, and the Seventeenth Amendment, in its provision for the election of Senators, provide that officials will be chosen "by the people". Each provision goes on to state that "the Electors in each State shall have the qualifications requisite for Electors of the most numerous branches of the State Legislature." So, while the right of suffrage in federal elections is established in the Constitution, it is subject to the imposition of state standards which are not discriminatory (*Lassiter v. Northhampton Election Bd.*, 360 U.S. 45, decided June 8, 1959.

investigations conducted under Section 104(a)(1) of the Act which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them?[11]

(2) If Congress did so authorize the Commission is such authorization constitutionally permissible?

A careful reading of the several opinions in *Groban*,[12] *Anonymous*,[13] and *Greene*[14] convinces us that, as applied to the circumstances of this case, a serious constitutional issue is presented as to whether or not the rules adopted by this Commission, which deprived these plaintiffs of the right of confrontation and cross-examination and the right to be apprised of the complaints against them, are violative of the

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[11] Congress authorized the Commission to hold hearings (42 U.S.C. 1975 (d)–(f)). Congress enumerated specific mandates with respect to certain less fundamental procedural aspects (42 U.S.C. 1975(a)). Congress did not expressly authorize the Commission to deny to parties investigated the right of apprisal, confrontation, and cross-examination. The Commission assumed that they had the power to so do.

On their own, they adopted a rule denying to the parties investigated the right of cross-examination. The rule is 3(i) and reads as follows:

"Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

When informed that a hearing would be held to investigate charges against them, the registrars requested the right to see the accusations and affidavits filed against them. They also specifically requested the names of their accusers. The Commission refused both requests. The denial in each instance was by resolution (see Stipulation).

[12] *In Re Groban*, 352 U.S. 330, 77 S. Ct. 510, decided February 25, 1957.

[13] *Anonymous* v. *Baker*, 360 U.S. 287, June 15, 1959.

[14] *Greene* v. *McElroy*, 360 U.S. 474, decided June 29, 1959.

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Constitution. There is no talismanic formula which can be applied. Every term, the Supreme Court examines the particular circumstances of particular cases in order to apply generalities which no one disputes.

Under the rationale of *Greene,* concurred in by eight justices, a decision is not now required on the constitutionality of these deprivations. It is sufficient that we find there to be nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination.

Here, plaintiffs are being subjected to public opprobrium and scorn without fair and adequate opportunity to disprove the accusations against them. They are being subjected to the distinct likelihood of losing their jobs. They have been charged with, and are under investigation for, criminal conduct, and are to be examined in connection with offenses constituting federal and state crimes [15] in a hearing which would

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[15] The Commission admittedly plans to hold the hearing to investigate written allegations that the registrars deprived certain citizens of their right to vote because of their color, race, religion, or national origin (see Affidavits of Registrars and Stipulation No. 5). Accordingly, it must be admitted that the registrars are being examined in connection with their alleged commission of federal and state crimes, as follows: to-wit:

18 U.S.C.A. 242

"Deprivation of rights under color of law

"Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any

completely fail to comport with traditional American ideas of fair play and would violate every element of natural justice.

The hearing sought to be restrained herein has been called pursuant to, and would be conducted in accordance with, rules which deny the right of confrontation. The registrars would be denied the right of cross-examination. They would be denied the right to be apprised of the identity of the person, or persons, making the charges against them, as well as the exact nature of the charge. These denials are the products of administrative decision not explicitly authorized by Congress. When we consider that this executive commission has been granted the right of subpoena to investigate allegations which, if true, would constitute the commission of crimes under state

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State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

LSA-R.S. 14: 134

"*Malfeasance in office*

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

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and federal law, and that it is further required to make a report of its findings to the Chief Executive whose duty it is to enforce federal criminal laws,[16] we can reach no other conclusion than to say that if ever the traditional procedural safeguards, spoken of in *Greene,* were required to protect appearers before a commission, then this is the instance. There, the Supreme Court, speaking through its Chief Justice, said:

> Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., *Mat-*

[16] 42 U.S.C. 1975(c)(b) requires the Commission to submit to the President a final and comprehensive report of its findings. Since the Commission is required to make this report to the President, the Chief Executive Officer of the land, it is fair to presume that a prime purpose of this report is to secure execution and enforcement of the laws presently in effect.

> *tox* v. *United States,* 156 U.S. 237, 242–244; *Kirby* v. *United States,* 174 U.S. 47; *Motes* v. *United States,* 178 U.S. 458, 474; *In re Oliver,* 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *Ohio Bell Telephone Co.* v. *Commission,* 301 U.S. 292; *Morgan* v. *United States,* 304 U.S. 1, 19; *Carter* v. *Kubler,* 320 U.S. 243; *Reilly* v. *Pinkus,* 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-fascist Committee* v. *McGrath,* 341 U.S. 168–169. [Italic ours.]
>
> * * * * *
>
> Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., *The Japanese Immigrant Case,* 189 U.S. 86, 101; *Dismuke* v. *United States,* 297 U.S. 167, 172; *Ex parte Endo,* 323 U.S. 283, 299–300; *American Power Co.* v. *Securities and Exchange Comm'n,* 329 U.S. 90, 107–108; *Hannegan* v. *Esquire,* 327 U.S. 146, 156; *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 49; Cf. *Anniston Mfg. Co.* v. *Davis,* 301 U.S. 337; *United States* v. *Rumely,* 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition.

And Mr. Justice Douglas, concurring in *Peters* v. *Hobby,* 349 U.S. 331, says:

> It, therefore, becomes necessary for me to reach the constitutional issue.

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> Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under *Corss*-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds, or by people who, though sincere, have poor facilities of observation and memory.
>
> Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. We have here a system where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government. * * *.

The Supreme Court, in *Greene,* clearly and concisely charted a salutary and sensible course to be followed. Whether the procedures under the circumstances here are constitutionally permissible we do not decide. In accordance with the teachings of *Greene,* we decide only that in a hearing such as the one envisaged here, the Commission had no right to deny the accused Registrars the traditional rights of confrontation and cross-examination in the absence of explicit congressional authorization to do so.

In *Greene* the Supreme Court held these safeguards were not to be denied to one being investigated for alleged communistic associations and sympathies in the absence of explicit authorization from either the President or Congress. Surely, duly chosen state officials are entitled to the same protection, especially since no considerations of national security are involved. So is every citizen. In *Greene,* the government did not take the petitioner's job away from him, but he did lose his job as a result of a government finding to the effect that he was not a good security risk. If the Commission here finds the charges against the registrars are true, they are faced not only with public scorn and possible loss of their jobs, but also with probable indictment, arrest and prosecution.

We are impressed, but not persuaded, by the government's argument that the legislative history of the Act proves that the Commission acted at the implied directed of Congress in adopting the rules here under attack. This argument of implied direction cannot be sustained in the face of the following language from *Greene:*

> The issue, as we see it, is whether the Department of Defense has been authorized to create an industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on the basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied the traditional procedural safeguards of confrontation and cross-examination.
>
> "If acquiescence or implied ratification were enough to show delegation of authority to take actions within the area of questionable constitutionality, we might agree with respondents that delegation has been shown here.

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* * * * *

Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen professions without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use. * * * Such decisions cannot be assumed by acquiescence or nonaction. * * * They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized. * * * but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for acting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government, are not endowed with authority to decide them.

Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., *The Japanese Immigrant Case,* 189 U.S. 86, 101; *Dismuke* v. *United States,* 297 U.S. 167, 172; *Ex parte Endo,* 323 U.S. 283, 299–300; *American Power Co.* v. *Securities and Exchange Comm'n,* 329 U.S. 90, 107–108; *Hannegan* v. *Esquire,* 327 U.S. 146, 156; *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 49; C.F. *Anniston Mfg. Co.* v. *Davis,* 301 U.S. 337; *United States* v. *Rumely,* 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit

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> action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition.

Moreover, even if we were to ignore *Greene,* which we have no right to do and certainly will not do, we would still reject the government's argument of implication. The rejection by Congress of more extensive rules is neither explicit nor implied authority be eliminate the fundamental safeguards under the circumstances here present. It is true that Congress refused to explicitly provide the safeguards, but it is equally true that there is nothing in the history of this legislation to show *that Congress even considered writing into the Act any power of the Commission to do away with apprisal, confrontation, and cross-examination.* The silence of Congress was apparently the product of thoughtful compromise. Some members of Congress positively wanted the fundamental safeguards spelled out, while others probably would have approved legislation specifically denying the accused these rights. *Congress remained silent.*

In *Greene* the Court specially found that the Defense Department *had been authorized* to fashion and apply an industrial clearance program but that the Department had not shown that either Congress or the President had *explicitly authorized* proceedings in which the accused was not afforded the safeguards of confrontation and cross-examination. In *Greene* the President, in general terms, had authorized the Department of Defense to create procedures to restrict the dissemination of classified information, and had apparently acquiesced in the elaborate program established by the Secretary of Defense which denied investigated parties of the rights of confrontation and cross-examination. The case for authorization there was stronger than here; e.g., in *Greene,*

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Part IV, § 2 of Executive Order 9835 specifically stated:

> * * * the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them, and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed * * *

Justice Clark, dissenting, thought the authorization was specific:

> How the Court can say, despite these facts, that the President had not sufficiently authorized the program is beyond me, unless the Court means that it is necessary for the President to write out the Industrial Security Manual in his own hand.

The Supreme Court, by an 8–1 majority, rejected the authorization as being insufficient.[17] We are not free to do otherwise here.

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[17] Equally as decisive on the issue of explicit authorization in areas of doubtful constitutionality is *Kent* v. *Dulles*, 357 U.S. 116. There, Congress had enacted legislation requiring every passport application to "contain a true recital of each and every matter of fact which may be required by any rules" of the Secretary of State, and that requirement had to be satisfied "before a passport is issued to any person." In this context, the Secretary asked for, and petitioners refused to file, the required affidavits stating whether they then were or ever had been members of the Communist party. Thereupon, the Secretary refused to further consider petitioners' application until such time as they filed the required affidavits. The

The conclusion is inevitable here that the burden is upon the government to show the "explicit action" by Congress authorizing the adoption of the rules which refuse to permit cross-examination, confrontation, and apprisal. In this case the government has made no attempt to point to any "explicit action" of authorization. Congress has made no such authorization, and absent such an explicit authorization, the rules in these particulars are clearly ultra vires.

THE EQUITIES

Proper voting practices are the cornerstone upon which our democratic balance is maintained. Discrimination upsets that balance. Moreover, discrimination clearly violates the Constitution. Steps designed to determine whether there has been discrimination are therefore of grave public interest and importance. When there are charges, as there are here, which state that by one means or another the vote is being denied to a qualified person, the public interest will be served by learning all the facts. Certainly, the surest way of finding out all the facts is to hear from everybody, and the surest test of a witness's veracity is his confrontation and cross-examination.

Government counsel seem to say in their briefs that their investigation is so very important that

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scholars, the courts, the Chief Executive, and the Attorney General all agreed that the issuance of passports had for years been a "discretionary act" on the part of the State Department. The Supreme Court decided that in order for the Secretary to deny a passport to a Communist whose travel abroad would be inimical to our national security, Congress must so provide in explicit terms. The Court once again had construed very narrowly the delegated power to curtail or dilute substantial and fundamental rights.

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this Court should not hold that the traditional safeguards should be afforded the registrars. We in no way disagree with counsel for the government concerning the value they place on the precious right to vote. But search as we have, we find nothing inimical to the government's interest in giving to the registrars the rights they insist upon here. The ultimate goal of Congress in creating the Commission was to find out all of the facts—the truth, not just possibly prejudiced opinion—so as to be able to safeguard the free exercise of the voting right, subject to the legitimate power of the state to prescribe nondiscriminatory and fair voting qualifications. Often in cases of this nature the Court must balance between individual and governmental interests. Here, we examine the record for that purpose and find no conflict. No better procedure exists for finding out the truth than to give the accused notice of the case against him and full opportunity to meet it. Hearings so conducted generate a feeling, so vital in a popular government, that justice is being done.

We have dealt at length with the immediate and irreparable damage that would be caused the registrars by forcing them to proceed without giving them their basic and traditional rights. No good purpose would be served by reviewing that phase of the case. Suffice it to say that we stand on what we have said and we agree with Judge Dawkins' original opinion—that these registrars are faced with immediate and irreparable injury. What damage, what injury, will the Commission suffer by giving to these registrars their traditional safeguards of due process of law, and by affording them the tenets of natural justice? In our humble opinion, all the Commission will suffer is perhaps a little inconvenience. It may take them three days rather than one to get the facts. How

best can they perform the major task of "finding out all the facts" than to give the persons investigated the basic legal safeguards. We have searched in vain throughout the extensive briefs filed by the government in an effort to find out what irreparable damage, or what damage at all, could be done the Commission by prohibiting them from holding a hearing pursuant to these "ultra vires" rules and resolutions.

We do find in various parts of the government's briefs several statements or intimations as to damage. It was suggested that irreparable damage will be suffered because the Commission will expire in November. The recent action of Congress in extending the life of the Commission dispels this argument.

The government also suggests that if copies of the accustations and the names of the accusers were furnished the registrars it might result in the accusers being prosecuted for perjury. That is a strong argument—if one person makes a written allegation under oath that another has committed a crime and this oath turns out to be untrue, the public interest does not require that the government protect the perjurer. The government also argues that the Court should take judicial notice of the possible pressure to which persons making complaints in this field are subject under present circumstances. This Court does not know of a single instance where any such pressure has actually been brought. Some honest, sincere, and well-meaning people really believe this, but we are not going to assume (in the total absence of evidence) that the people of this State will be guilty of such a practice. Finally, the government argues that there is no point in telling these people what they did because they are the registrars and they *know* what they did. This contention assumes the registrars' guilt,

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an assumption which itself does violence to the American concept of justice—that all persons accused of crime are presumed to be innocent until proven guilty by competent evidence.

Insofar as the right to cross-examination is concerned, the government offers no reason why this should be denied. They merely say that they do not have to give it because congressional committees do not, and that Congress did not intend them to do it.

The Commission has authority to hold public hearings on vital public issues. Knowledge and understanding of every element of the problem will give greater clarity and perspective to one of the most difficult questions facing our country. Such a study, such an investigation, fairly conducted, will tend to unite responsible people in a common effort to solve these problems. Investigation and hearings will bring into proper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead, but a fact finding investigation conducted as this one is proposed to be conducted can result only in misunderstanding, suspicion, hostility, and unneeded bitterness.

Natural justice would not require confrontation, apprisal, and cross-examination in every hearing of the Commission, but only in instances where, as here, the record makes it abundantly clear that those being investigated are accused and suspected of criminal conduct.

Believing as we do that the procedures and the rules of the Commission in the particulars heretofore discussed are ultra vires and threaten the registrars with immediate and irreparable damage, and believing fur-

ther that the interests of the government, the public, and the Commission will best be served by the holding of a full and fair hearing wherein all accused of crimes are given a fair chance to develop all the facts, we have but one course to take—that is to dismiss the government's motion for summary judgment and grant the prayer for an injunction, in accordance with this opinion.

It is so ordered on this the 6th day of October, 1959.

JOHN MINOR WISDOM, *Circuit Judge* (dissenting).

I concur in the holding that the Act is constitutional and that the Administrative Procedure Act is inapplicable. I feel compelled, however, to dissent from the holding that under *Greene* v. *McElroy* the rules of the Commission are ultra vires.

I

The Commission's rules may be inadequate, in terms of traditional safeguards accorded a defendant in a criminal trial, but they are the rules Congress authorized for hearings by the Civil Rights Commission.

This case differs radically from *Greene* v. *McElroy*. Here, Congress took pains to set out in the Act, in its delegation of authority, mandatory rules of procedure to be followed by the Commission. The Commission's rules folow the language of the statute or are based on the intent of the statute.[1] Thus, on the important issue of the right of cross-examination, the Commission rule provides: "Interrogation of witnesses at hearings shall be conducted only by authorized staff personnel."[2] This is based on the statutory provision, Section 102(c): "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights." The limitation of the activities of a lawyer

Footnotes on p. 41.

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to giving advice to his client, is just a way of saying that the lawyer (or his client) cannot cross-examine an adverse witness.

A central issue in the controversy over civil rights legislation was whether witnesses should have the traditional safeguards of notice, confrontation, and cross-examination. The 1956 Civil Rights Bill, H.R. 627, as reported by the House Judiciary Committee, contained no special rules of procedure. H. Rep. No. 2187, 84 Cong., 2d Sess. It was amended on the floor of the House by the addition of elaborate safeguards which Representative Dies of Texas proposed. 102 Cong. Rec. 13542, 13548. This amendment required notice of the subject of the inquiry and confrontation, and allowed limited cross-examination. The bill passed the House, but no action was taken on it in the Senate. In 1957 several bills were introduced containing the same procedural provisions as the 1956 bill, as amended. One of these was S. 83, the subject of Senate hearings in 1957.[3] The position of the Department of Justice, as stated by the Attorney General, was that "it would be a mistake to make it the vehicle for experimenting with new rules". Hearings, Senate Judiciary Committee, 85 Cong., 1st Sess., p. 14. In the House hearings on the 1957 Civil Rights proposal Senator, then Representative, Keating asked Attorney General Brownell if the Department would object to the Committee inserting in the bill a provision "similar to those set up in the rules of the House for the conduct of congressional committees". General Brownell stated that the Department had no objection to such rules of procedure. H.R. 6127, adopted into law as the Civil Rights Act of 1957, incorporated the House "Fair Play Rules"[4] as Section 102 of the Act.[5]

The action of Congress in refusing to adopt a particular bill and adoption of another bill is often an unreliable guide to congressional intent. But the circumstances in which H.R. 6127 became law, rather than S. 83 or H.R. 627, make it clear that Congress, after careful deliberation, made a choice of procedures. Congress rejected the traditional safeguards accorded a defendant in a criminal trial and accepted the House "Fair Play Rules".

The House "Fair Play Rules" were drawn for the conduct of congressional investigating committees. They were the indirect product of innumerable legal articles, judicial dicta, and editorials.[6] They were the direct product of careful study.[7] It is safe to say that when the House "Fair Play Rules" were adopted as Section 102 of the Civil Rights Act of 1957 every member of the House and Senate regarded that action as an explicit declaration that Congress affirmatively rejected rules extending to witnesses the rights of notice, confrontation, and cross-examination; that, instead, Congress authorized and directed the Civil Rights Commission to follow its more limited "Fair Play Rules".

This background distinguishes the case from *Greene* v. *McElroy*. There, the majority's reasoning was the President and Congress would not have delegated to the Department of Defense the power to deprive a man of his job as a result of a hearing in which he has no right of confrontation or cross-examination, without including in the delegation express authorization to by-pass the traditional due process safeguards. Here, Congress expressly authorized the by-pass.

II

I therefore reach the issue of the constitutionality of the procedure.

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A hearing subjecting a subpoened witness to public opprobrium, loss of reputation, loss of a job, and possible state and federal prosecution based on testimony brought out at the hearing, carries sanctions no less severe than a criminal trial. Fundamental fairness would seem to require that such a witness have the opportunity to assert the rights of notice, confrontation, cross-examination, and other due process safeguards. No court however has gone that far.

Mr. Justice Clark, the only member of the Supreme Court who reached the constitutional issue in Greene, stated: "[T]he Court has long ago and repeatedly approved administrative action where the right of cross-examination and confrontation were not permitted." Without exception, the courts have drawn a distinction between investigative and adjudicative proceedings. Witnesses in investigative hearings do not have the constitutional rights of a witness in an adjudicative hearing. The Fifth Amendment gives a witness protection in an investigation; the opportunity to assert all due process rights in any later adjudicative proceedings is a sufficient protection.[b]

[b] *In re Groban,* 1957, 352 U.S. 330, 77 S.Ct. 510, 1 L. Ed. 2d 376; *Bowles* v. *Baer,* 7 Cir., 1954, 142 F. 2d 787. *Norwegian Nitrogen Prod. Co.* v. *United States,* 1932, 288 U.S. 294, 53 S.Ct. 350, 77 L. Ed. 796.

In *Groban* a majority of the Supreme Court went very far indeed in denying the right to counsel. An Ohio statute, authorizing the State Fire Marshall to investigate the cause of fires, conferred broad powers on the investigating officer. He could hold the investigation in private, exclude counsel, punish witnesses who refuse to testify by summarily committing them to jail, and, if he believed the evidence would warrant a conviction for arson or a similar crime, he could arrest the witness after the investigation.

The appellants, who were called upon to testify concerning the cause of a fire at their place of business, refused to testify in the absence of counsel. They were committed to jail. In a habeas corpus proceeding, they contended that they had a constitutional right to counsel under the due process clause of the Fourteenth amendment. The court held, five to four, that appellants had no constitutional right to counsel in giving testimony before an investigative body that does not adjudicate legal rights and responsibilities. If Groban was not entitled to due process, no witness is entitled to due process in an investigation.

Taking the law as it is, the Commission's rules are constitutional.

III

The rub in this case comes from the Act itself. It comes from the incongruity of a legislative commission of inquiry investigating specific complaints against individuals accused of crimes.[9] To my mind, the creation of such a commission is of questionable legislative propriety, at best. It carries grave danger of legislative usurpation, at worst.

The investigation of specific violations of the law is for grand juries, not legislative commissions. With all deference to Congress, a commission, constituted to investigate a broad problem of national interest, has no business holding hearings that must inevitably develop into legislative trials of individuals. When a subpoened witness accused of a crime may be subjected to trial by exposure, a fact-finding determination and punishment, he should have the same rights of notice, confrontation, and cross-examination, and all the other hard-earned rights embodied in due process, that any one accused of breaking the law is entitled to when he is tried by a jury before a judge.

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The Commission does not formally adjudicate guilt or impose a formal sentence, but an individual against whom a complaint is made to the Commission may be exposed to all the hardships of a trial and to punishment in many forms.

The House "Fair Play Rules" are a step in the proper direction—for congressional committees. Procedures suitable for Congress' own committees, however, are less than adequate for a trial by an autonomous commission to which Congress has delegated its power of inquiry.

The high purposes animating the creation of the Civil Rights Commission do not diminish the inherent dangers in legislative trials. They simply obscure the dangerous means used to attain the ends of the legislation.

These, however, are considerations for Congress.[10] On the law, unless the minority view in *Groban* should prevail, the Act is constitutional, the rules authorized.

Footnotes

[1] See Appendix A and Appendix B.

[2] This is the rule universally followed by committees of the House and Senate. It permits a form of cross-examination; submission of written questions to be put to the witness by the Chairman—for whatever that is worth as cross-examination.

[3] See Appendix C.

[4] Amendment to Rule XI(25) of the Rules of the House of Representatives. Adopted March 23, 1955, 101 Cong. Rec. 3569–85; House Resolution 151, Rules and Manual, United States House of Representatives, 1959, section 735 (i)–(q).

[5] Section 102(a) through 102(i) of the statute is identical with the House "Fair Play Rules".

[6] For a discussion of the various proposals for a code of procedure before congressional committees, see Maslow, Fair Procedure in Congressional Investigations: A Proposed Code, 54 Cal. L. Rev. 839 (1954). For the code proposed by the American Bar Association, see 40 Am. Bar Ass'n Journ. 900 (1954). See the following, some before and some after adoption of the Fair Play Rules, some

dealing directly with the procedure before congressional committees and some dealing with the rights of witnesses generally in hearings before investigative or administrative bodies; Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 1953 (1926); Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. Rev. 691 (1926); Herweitz and Mulligan, The Legislative Investigating Committee, 33 Cal. L. Rev. 1 (1933); Morgan, Congressional Investigations and Judicial Review; Kilbourn & Thompson Revisited, 37 Cal. L. Rev. 446 (1949); Davis, The Requirement of Opportunity to be Heard in the Administrative Process, 51 Yale L. Journ. 1091 (1942); Liacos, Rights of Witnesses Before Congressional Committees, 33 Bos. U. L. Rev. 337 (1953); Symposium on Legislative Investigations; Safeguards of Witnesses, 29 Notre Dame Law., 157 (1954); Keating, The Investigating Power of Congress, 14 Fed. Bar Jour. 171 (1954); Kefauver, A Code of Conduct for Congressional Investigations, 8 Ark. L. Rev. 369 (1954); Chase, Improving Congressional Investigations, 30 Temp. L.Q. 126 (1957; Davis, Requirements of a Trial-Type Hearing, 70 Harv. L. Rev. 193 (1956); McKay, The Right of Confrontation, Wash. U. L.Q. 122 (1959). See the following recent notes and comments: Due Process and the Right to Counsel, 33 St. John's L. Rev. 67 (1957); The Civil Rights Act of 1957 and Contempt of Court, 48 Cornell L.Q. 661 (1958); Constitutional Limitations on the Legislative Power of Investigations, 7 Buffalo L. Rev. 267 (1958); Representation by Counsel, 58 Cal. L. Rev. 395 (1958). See also Barth, Government by Investigation (Viking Press, N.Y., 1955) and Taylor, Grand Inquest (Simon & Schuster, N.Y., 1955).

[7] In 1954 both houses of Congress held extensive hearings on the matter of committee procedures. Hearings before the Subcommittee on Legislative Procedure of the House Rules Committee, Legislative Procedure, 83d Cong., 2d Sess. (1954); Hearings before the Subcommittee on Rules of the Senate Rules and Administration Committee, Rules of Procedure for Senate Investigating Committees, 83d Cong., 2d Sess. (1954). See also Report of Senate Committee on Rules and Administration to accompany S. Res. 17, Rules of Procedure for Senate Investigating Committees, 84th Cong., 1955.

[8] Proponents of the legislation emphasized repeatedly; "The Commission created by the proposal is purely investigatory and empowered only to make recommendations". H. Rep. No. 291, 85th Cong., 1st Sess., p. 6.

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[9] Section 104(a)(1) of the Act (Duties of the Commission) provides: "The Commission shall—(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

[10] The inclusion in the body of the statute of mandatory rules of procedure is unique in legislation setting up an investigatory commission. This, and the provision requiring application to a court for enforcement of process indicate congressional sensitivity to the problem.

Appendix A

Rules of Procedure of the Commission

Sec. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearing may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session, or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

Appendix B

In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85–315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 105(f) of Public Law 85–135, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission or of any subcommittee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the Provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the mem-

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bers present at which at least a quorum of four members is present.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission or by the Chairman upon the request of a member of the Commission.

(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for cov-

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erage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

Appendix C (S. 83)

Rights of persons adversely affected by testimony

(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that; (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right; (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under

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the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence *xx* or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.

APPENDIX B

In the United States District Court for the Western District of Louisiana, Shreveport Division

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[Filed, November 9, 1959]

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA *vs.* JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Order

For reasons assigned in the Court's written opinion of October 6, 1959,

It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiff registrars, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

This injunction does not prohibit all hearings pursuant to Public Law 85–315, 85th Congress, 42 U.S.C.A. 1975, et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

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Thus done and signed in Chambers on this the 9 day of November, 1959.

(S) Ben C. Dawkins, Jr.
BEN C. DAWKINS, Jr.,
United States District Judge.

(S) Edwin F. Hunter, Jr.
EDWIN F. HUNTER, Jr.,
United States District Judge.

APPENDIX C

In the United States District Court for the Western District of Louisiana, Shreveport Division

[Filed July 12, 1959]

Civil Action No. 7479

MRS. MARGARET M. LARCHE, ET AL., IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES, OF THE STATE OF LOUISIANA *vs.* JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

Civil Action No. 7480

J. A. H. SLAWSON, ET AL.

vs.

JOHN A. HANNAH, ET AL.

BEN C. DAWKINS, JR., *Chief Judge*

Ruling on applications for temporary restraining orders

We are called upon here to pass tentatively upon one of the burning issues of our time—the propriety and validity of the Rules and Proceedings of the Civil Rights Commission, as established by Congress in September, 1957.[1]

[1] Public Law 85-315, 71 Stat. 634, 42 U.S.C.A. § 1975 a-e.

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That Commission now proposes to hold a hearing, in the Federal Court room at Shreveport, Louisiana, on July 13, 1959, to investigate purported violations of the civil voting rights of some 67 persons, who are said to have filed sworn complaints with the Commission. Pursuant to, and in implementation of, its plans, the Commission has caused subpoenas, and subpoenas duces tecum, to be served upon the plaintiffs in these suits, commanding them to be present and give testimony at the hearing, and requiring the 16 Registrars of Voters, who are plaintiffs [2] in Civil Action No. 7479, to bring with them, for inspection and copying by the Commission, a large number of records from their offices.

These suits, brought against the members of the Commission, and the Commission itself, were filed on July 10, 1959, and are addressed to the equitable powers of this Court.[3] They seek to stay the effectiveness of the Commission's subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing itself,[4] which, plaintiffs aver, under the Rules of Procedure adopted by the Commission, would violate their fundamental constitutional rights and cause them immediate and irreparable damage. Moreover, praying that a three-judge

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[2] These plaintiffs are the duly appointed and constituted Registrars of Voters in the Louisiana Parishes (counties) of Morehouse, Ouachita, Webster, Bossier, Claiborne, Bienville, DeSoto, East Carroll, Madison, Jackson, Red River, Caldwell, Caddo, East Feliciana, West Feliciana, and Washington, all but the last three of which are located in the northern part of the State.

[3] Also alleging jurisdiction in this Court based upon Federal questions, 28 U.S.C.A. § 1331, and Diverse Citizenship, 28 U.S.C.A. § 1332.

[4] Pursuant to 28 U.S.C.A. § 2284(3).

court[5] be convened for that purpose, the Registrar-plaintiffs ask that the Act creating the Commission be declared[6] violative of the Federal Constitution, and thus unenforceable.

Detailing their complaints, supported by sworn affidavits and exhibits attached (and here briefly paraphrased), the Registrar-plaintiffs, in Civil Action No. 7479, allege that between June 29, 1959, and July 6, 1959, each of them were served with subpoenas and subpoenas duces tecum, issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959, and to bring their records with them; that they have not been informed of the nature of the complaint or complaints against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana, verbally and in writing,[7] that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine the written complaints filed against them, nor would it divulge the name or names of the secret complainants, all of which is arbitrary and unreasonable, and in violation of plaintiffs' fundamental rights.

They further aver that they, at all times, have complied with the laws of the State of Louisiana, but that the subpoenas served upon them would require them to violate such laws,[8] in that the Registrars'

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[5] 28 U.S.C.A. §§ 2282, 2284.

[6] Under the Declaratory Judgment Statute, 28 U.S.C.A. § 2201, et seq.

[7] The writings are attached to the complaint.

[8] L.S.A.—R.S. 18:169. "*Control and custody of registration books and other records.*

"The books of registration, together with all the records, registry stub books, and all other books and paraphernalia used

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records legally may not be removed from their offices, except "upon an order of a competent court", criminal penalties being provided for violations of these statutes;[9] and that the Commission is not a "competent court". Hence, they say, to comply with the subpoenas, they would be violating the State laws, and subjecting themselves to the penalties thus provided.

These plaintiffs further allege that, attached to the subpoenas served upon them, was a mimeographed document entitled "Rules of Procedure for hearings of the Commission on Civil Rights" in which appears the following: "(1) Interrogation of witnesses shall be conducted only by members of the Commission or by authorized staff personnel"; and that thereby plain-

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for the conduct of the registrar's office, shall at all times be kept under the control of and in the custody of the registrar at his principal office. They shall not be removed therefrom for any purpose except upon an order of a competent court, except the parish register and registration certificate books when these are necessary for the registration of voters, when registration is permitted at places other than at the central office."

L.S.A.—R.S. 18: 251. "*Custody of records.*

"Except as otherwise provided in this Title, the registers, records, files, books, and paraphernalia used for the conduct of the registrar's office shall at all times be kept under the control and in the custody of the registrar at his principal office and shall be removed therefrom only on order of a competent court. Added Acts 1952, No. 415, § 2."

[9] L.S.A.—R.S. 18: 221. "*Violations generally; successive offenses.*

"No person shall violate any provision of this Chapter for which no penalty is specifically provided, or willfully fail or refuse to perform an act or duty required under this Chapter.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense."

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tiffs are deprived of their constitutional right to cross-examine witnesses who may testify against them. They contend that the Commission and its members thus are acting in an *ultra vires* manner in (1) attempting to force plaintiffs to testify at the proposed hearing without first advising them of the nature of the complaint or complaints existing; (2) without allowing plaintiffs to be confronted by the complaining witnesses; (3) not allowing plaintiffs to have counsel empowered to fully represent their interests in such hearing; (4) not allowing cross-examination of the complaining witnesses; and (5) causing irreparable damage to plaintiffs by requiring them to violate the Laws of Louisiana, which would subject them to serious criminal penalties. In their brief, they also urge, as a direct incident of the hearing itself, with unnamed and unknown witnesses testifying against them, not subject to cross-examination by plaintiffs' counsel, that they will be wrongfully accused of violations of both Federal [10] and State [11] laws, without ade-

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[10] 18 U.S.C.A. § 242. "*Deprivation of rights under color of law*

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

42 U.S.C.A. § 1983. "*Civil action for deprivation of rights*

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and

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quate opportunity to disprove such accusations, and thus be held up, by the Commission's actions, to public opprobrium and scorn, all to their irreparable injury and damage.

They further contend that the Commission, being an agency of the Executive branch of the Federal Government, is subject to the provisions of the Administrative Procedure Act,[12] and, as such, is required to state explicitly the charges against plaintiffs, to permit them to be confronted with the witnesses against them, and to allow their counsel fully to cross-examine such witnesses. Accordingly, these plaintiffs seek the relief hereinabove outlined.

In general, the plaintiffs in Civil Action No. 7480, who are individual citizens of Louisiana, make the same allegations and contentions as those in No. 7479, except that they have not been called upon to produce any official records. They do not challenge the constitutionality of the Act creating the Commission, but otherwise

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laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979."

[11] L.S.A.—R.S. 14:134. "*Malfeasance in office*

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

And see L.S.A.—R.S. 18:221, fn. 9.

[12] 5 U.S.C.A. §§ 1001, et seq.

their prayer for relief is substantially similar to that in No. 7479.

Several days prior to July 10, 1959, we were advised by plaintiffs' counsel that they would file these suits on the date indicated. While, as a general rule, applications for temporary restraining orders are considered *ex parte,* solely on the face of the verified complaint and any attached documents, because of the national importance of the matters involved, we immediately notified counsel for the Commission, and its Vice-Chairman, Honorable Robert G. Storey (a personal friend of the Court's, of long standing) of our information, and invited them to be present for a hearing on the applications. The suits were filed at 1:30 P.M. on July 10, and at 2:00 P.M., in open Court, these gentlemen, and counsel for plaintiffs, being present, we convened Court, but immediately recessed in order to give the Commission's representatives opportunity to study the complaints and briefs filed by plaintiffs. At 3:30 P.M., we reconvened and heard oral arguments, from both sides, until 5:20 P.M., at which time the matter of the restraining orders was submitted for decision on the oral arguments and briefs filed by the proponents and opponents of the applications. We have considered the able arguments, studied the respective briefs and authorities cited, and now proceed to our ruling. Necessarily, because of the time element, we have been compelled, under great pressure, to consider the questions rather hastily; and we reserve the right to alter our views, if necessary, after more mature deliberation.

The Court has jurisdiction. 28 U.S.C.A. §§ 1331, 1332, 2201, 2282, 2284. *Jones* v. *Securities Commission,* 298 U.S. 1, 56 S. Ct. 654, 80 L. Ed 1015.

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We are not strongly impressed with the Registrar-plaintiffs' contention that the subpoenas duces tecum, if complied with, would subject them to criminal penalties under Louisiana law. Literally, of course, if they directly complied without more, they are correct in their understanding of the State law. Practically, however, another and different aspect is presented, for under the Civil Rights Commission Act they can refuse to produce the records, without penalties of any kind, and the only recourse the Commission would have would be to request the Attorney General of the United States to apply to this Court, under 42 U.S.C.A. § 1975d(g)[13] for an order requiring their production. Plaintiffs then would be protected against State prosecution by the very terms of LSA–R.S. 18:236,[14] as well as by LSA–R.S. 18:169 (see

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[13] "*Aid of courts in enforcing subpoenas*

"(g) In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof. Pub. L. 85–315, Part I, § 105, Sept. 9, 1957, 71 Stat. 636."

[14] "§ 236. *Alteration, defacing, destruction or removal of records; penalty*

"No registrar, deputy, clerk, or employee of any registrar, or any person having, or having been given access to, or right of inspection, copying or photographing of any book, card, record, or other document pertaining to the registration of voters, shall

fn. 8), for this Court clearly is a "competent court", within the meaning of those Statutes.

Likewise, plaintiffs would suffer no immediate federal penalties under the Act for refusal either to appear or to testify, but would be subject to an enforcement order from this Court, which would see to it that their constitutional rights against self-incrimination are adequately protected. Moreover, under the Act, since their counsel are entitled to be present, they could be advised, at each step of the proceedings, whether to claim the protection of the Fifth Amendment, even though, in this day, the general public has come to consider such a claim as tantamount to a plea of guilty, particularly in response to "loaded" questions.

We are strongly of the opinion, however, that plaintiffs' remaining grounds for immediate relief are well taken:

First, it appears rather clear, at this juncture, that the Civil Rights Commission is an "agency" of the Executive branch of the United States, within the meaning of that term as defined at 5 U.S.C.A. § 1001

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illegally or improperly alter, add to, deface, destroy, or remove same from the custody of the registrar.

"Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than sixty days nor more than two years. However, nothing in this Section prevents a competent court from requiring, by proper order, the production by the registrar in court, in any proceeding pending there in, of any document, book, card, or record necessary and material, in the opinion of the court, to the determination of the proceeding; such documents do not become permanent records of the court, but shall be returned to the custody of the registrar immediately after inspection by the court. The court may require a photostatic copy thereof to be placed in the record. Added Acts 1952, No. 415, § 2."

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(a).[15] See also 42 U.S.C.A. § 1975(a).[16] It performs quasi-judicial functions in its hearings, its fact findings, its studies of "legal developments constituting a denial of equal protection of the laws under the Constitution", and its appraisal of "the laws and policies of the Federal Government" in the same respect.[17] It

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[15] "(a) 'Agency' means each authority (whether or not within or subject to review by another agency) of the Government of the United States, other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, * * *."

[16] "§ 1975. *Commission on Civil Rights—Establishment*

"(a) There is created in the *executive branch* of the Government a Commission on Civil Rights (hereinafter called the 'Commission')." [Emphasis supplied.]

[17] 42 U.S.C.A. § 1975c. "*Duties; reports; termination*

"(a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

"adjudicates" by its rulings upon the admissibility of evidence at its hearings and by its determinations of what is or is not the truth in matters before it. Thus we think that the Commission is subject to the provisions of section 4 of the Administrative Procedure Act,[18] which requires, among other things that persons affected by agency action "* * * shall be timely informed of the matters of fact and law asserted." Here that would encompass the *nature* of the charges filed against plaintiffs, as well as the matters of fact and law wherein the complainants' voting rights allegedly have been violated. The Commission also is subject to section 6 which would require it to grant plaintiffs the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts.[19] This, by its Rules, the Commission refuses

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"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957."

[18] 5 U.S.C.A. § 1004. "*Adjudications*

* * * * *

"(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) *the matters of fact and law asserted.* * * *" [Emphasis supplied.]

[19] U.S.C.A. § 1006. "*Hearings, presiding officers; powers and duties; burden of proof; evidence; record as basis for decision*

* * * * *

"(c) * * * Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. * * *"

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to do, and in so doing, regardless of its well intentioned motives, it violates the terms of that Act. Plaintiffs are entitled, therefore, to protection against these Rules, which would deprive them of their plain rights under the Act.

Second, while the statute creating the Commission inferentially permits it to adopt reasonable Rules, 42 U.S.C.A. § 1975(b), there is no provision whatsoever in the law to the effect that such Rules may include those here complained of, which plainly violate plaintiff's basic rights to know in advance with what they are charged, to be confronted by the witnesses against them, [20] and to cross-examine their accusers. We cannot believe that Congress intended to deny these fundamental rights to anyone, and because of such belief it is our opinion that these Rules of the Commission are *ultra vires* and unenforceable. Therefore, plaintiffs are entitled to immediate relief against them.

Third, entirely aside from the statutory questions just discussed, the Courts of the United States, and their Anglo-Saxon predecessors, always have seen to it that, in hearings or trials of all kinds, persons accused of violating laws must be adequately advised of the charges against them, confronted by their accusers, and permitted to search for the truth through thorough cross-examination. In *Jones* v. *Securities Commission,* 298 U.S. 1, 27, 57 S. Ct. 654, 80 L. Ed. 1015, the Supreme Court said:

> * * * "A general, roving, offensive, inquisitorial, compulsory investigation, conducted by

[20] 42 U.S.C.A. § 1975a(g) inferentially authorizes the Commission to sit in executive or closed session. Apparently pursuant to this, the Commission's Rules 2 (e) and (g) were adopted. They do not guaranteee, or apparently even permit, the person accused at such an executive session to be present to confront the witness or witnesses against him.

> a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end."
>
> The fear that some malefactor may go unwhipped of justice weighs as nothing against this just and strong condemnation of a practice so odious. * * *
>
> The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. *An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing to light.* * * * [Emphasis supplied.]

In *Morgan, et al.*, v. *United States, et al.*, 304 U.S. 1, 14, 20, 25, 58 S. Ct. 773, 82 L. Ed. 1129, involving an administrative hearing, the Court said:

> The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence

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> to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand "a fair and open hearing"—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an "inexorable safeguard." * * *
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> * * * * *
>
> The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. * * *
>
> "Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. * * *"

In the most recent decision on this subject, handed down by the Supreme Court on June 29, 1959, *Greene* v. *McElroy*, No. 180, October 1958 Term, — U.S. —, — S. Ct. —, — L. Ed. —, 29 L.W. 4528, 4534, 4538, and speaking through Chief Justice Warren, the following language is found:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an op-

portunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, *e.g., Mattox* v. *United States,* 156 U.S. 237, 242–244; *Kirby* v. *United States,* 174 U.S. 47; *Motes* v. *United States,* 178 U.S. 458, 474; *In re Oliver,* 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. *E.g., Southern R. Co.* v. *Virginia,* 290 U.S. 190; *Ohio Bell Telephone Co.* v. *Commission,* 301 U.S. 292; *Morgan* v. *United States,* 304 U.S. 1, 19; *Carter* v. *Kubler,* 320 U.S. 243; *Reilly* v. *Pinkus,* 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-fascist Committee* v. *McGrath,* 341 U.S. 168–169 (concurring opinion).

Professor Wigmore, commenting on the importance of cross-examination, states in his treatise, 5 Wigmore on Evidence (3d ed. 1940) § 1367:

"For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction

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that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience."

Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, *e.g.*, *The Japanese Immigrant Case,* 189 U.S. 86, 101; *Dismuke* v. *United States,* 297 U.S. 167, 172; *Ex parte Endo,* 323 U.S. 283, 299–300; *American Power Co.* v. *Securities and Exchange Comm'n,* 329 U.S. 90, 107–108; *Hannegan* v. *Esquire,* 327 U.S. 146, 156; *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 49. *Cf. Anniston Mfg. Co.* v. *Davis,* 301 U.S. 337; *United States* v. *Rumely,* 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition.

These authorities, therefore, clearly establish additional reasons why plaintiffs should be granted immediate relief.

Fourth, there is every reason to believe, considering that the Commission has announced its receipt of complaints from some 67 persons, that those persons will testify that plaintiffs have violated either the State or Federal laws, or both. Plaintiffs thus will be condemned out of the mouths of these witnesses, and plaintiffs' testimony alone, without having the right to cross-examine and thereby to test the truth of such assertions, may not be adequate to meet or overcome the charges, thus permitting plaintiffs to be stigmatized and held up, before the eyes of the nation to opprobrium and scorn. Moreover, not knowing in

advance the exact nature of the charges to be made against them, some of the plaintiffs, whose official domiciles are at varying distances up to 250 miles from Shreveport, may not be able physically to obtain the presence of witnesses of their own, who might negative or disprove the claims of the complaining witnesses, especially since the Commission has announced that its hearing will last only one day.

These are further solid reasons, showing possible or probable irreparable injury to plaintiffs, which justify their being granted immediate relief.

Fifth, and finally, plaintiffs raised very serious questions regarding the validity—the constitutionality—of the very Act which created the Commission. We do not intimate here any opinion as to the constitutionality of the Statute, for that is a matter to be decided by the three-judge court to be convened by the Chief Judge of this Circuit. However, the seriousness of the attack must be noted, in considering whether a temporary restraining order should be issued, to stay the effectiveness of the Statute until its validity *vel non* can be determined by the three-judge court after hearing on plaintiffs' application for an interlocutory injunction. See *Ohio Oil Co.* v. *Conway,* 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972, where the Supreme Court stated, in a *per curiam* opinion:

> The application for an interlocutory injunction was submitted on ex parte affidavits which are harmonious in some particulars and contradictory in other. The affidavits, especially those for the defendant, are open to the criticism that on some points mere conclusions are given instead of primary facts. But enough appears to make it plain that there is a real dispute over material questions of fact which cannot be satisfactorily resolved upon the

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present affidavits and yet must be resolved before the constitutional validity of the amendatory statute can be determined.

* * * * *

Where the questions presented by an application for an interlocutory injunction are grave, and the injury to the moving party will be certain and irreparable if the application be denied and the final decree be in his favor, while if the injunction be granted the injury to opposing party, even if the final decree be in his favor, will be inconsiderable, or may be adequately indemnified by a bond, the injunction usually will be granted. *Love* v. *Atchison, Topeka & Santa Fe R. Co.,* 185 Fed. 321, 331–332.

In *Crockett* v. *Hortman,* 101 F. Supp. 111, 115, at page 115, Judge Wright, of the Eastern District of Louisiana, dealing with the constitutionality of a State statute, said:

Where as here the questions presented by an application for a temporary injunction are grave, and the injury to the moving parties will be certain and irreparable if the application be denied and the final decree be in their favor, while if the injunction be granted the injury to opposing parties, even if the final decree be in their favor, will be inconsiderable, the injunction should be granted. *Ohio Oil Co.* v. *Conway,* 279 U.S. 813, 49 S. Ct. 256, 73 L. Ed. 972.

The determination of the grave constitutional issues presented in this case should not be decided without a trial on the merits, *Polk Co.* v. *Glover,* 305 U.S. 5, 59 S. Ct. 15, 83 L. Ed. 6, and a temporary injunction should be issued in order that the status quo may be preserved until that time.

To the same effect, see also *Burton, et al.* v. *Matanuska Valley Lines, Inc.,* 244 F. 2d 647.

This, then, is another ground upon which plaintiffs are entitled to the immediate relief they seek.

For these reasons,[21] the applications for temporary restraining orders will be GRANTED.

Thus done and signed, in Chambers, at Shreveport, Louisiana, on this the 12th day of July, 1959.

———— ————,

United States District Judge.

---

[21] Nothing that we have said, in ruling upon these cases, is intended in any way to reflect upon the Commission, its members or its staff, all of whom, we are sure, are honorable gentlemen.

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. ——

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.

No. ——

JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

MOTION TO ADVANCE

Pursuant to Rule 43(4), the Solicitor General, on behalf of appellants in No. 549, *Hannah* v. *Larche,* and petitioners in No. 550, *Hannah* v. *Slawson,* respectfully moves that these cases be advanced for hearing and decision. In support of this motion, we show as follows:

1. The Commission on Civil Rights, created by the Civil Rights Act of 1957, 42 U.S.C. 1975, has the duty, *inter alia,* of investigating allegations that citizens of the United States have been deprived of their right to vote by reason of their color, race, religion, or na-

tional origin. The 1957 Act provided that a final report on the Commission's activities, findings, and recommendations was to be submitted to the President and the Congress not later than two years from September 9, 1957. 42 U.S.C. 1975c(b). On September 28, 1959, the limit for the submission of the report was extended for two years. P.L. 86–383, 73 Stat. 724. The Commission expires sixty days after the submission of its final report. 42 U.S.C. 1975c(c).

2. On October 7, 1959, the District Court for the Western District of Louisiana in No. ——, *Hannah* v. *Larche,* rendered an opinion holding that certain of the Commission's rules and procedures were unauthorized by statute. On November 9, 1959, the court entered a formal order enjoining the Commission from holding any hearings in the Western District of Louisiana in which these procedures were followed. In the attached letter from Mr. Gordon M. Tiffany, the Commission's Staff Director, to the Attorney General, dated November 18, 1959, it is stated that, although the orders of the District Court are limited to the Western District of Louisiana, the Commission believes that it cannot, in good conscience, hold further hearings anywhere in the United States so long as the orders of the District Court are outstanding, inasmuch as such hearings in other districts would only result in cumulative litigation, delay, and unwarranted expenditure of money, time, and personnel. On the other hand, the facts necessary to the preparation of the Commission's report must be developed by hearings at which sworn testimony and reliable documentary evidence are adduced. The ex-

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perience of the Commission has shown that the power to conduct such hearings is essential to the performance of its statutory duties. It is apparent, therefore, that unless and until the injunction imposed by the District Court is lifted, the Commission will not be able to function effectively and to carry out the duties with which it was charged by the Congress.

3. The Commission now has less than twenty-two months left in which to submit a final report and considerably less than that for investigatory activities leading up to the preparation of that report. If the normal briefing and argument procedures and time-limits are observed in these cases, it is likely that much of the remaining life of the Commission will be lost before there could be a definitive ruling by this Court.

Accordingly, the Government respectfully suggests that these cases be set down for hearing at the January argument session. If this should be done, the Government would be ready to file its briefs on the merits by December 15. This would permit ample time for the preparation and filing of opposing briefs by the other parties.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

NOVEMBER 1959.

APPENDIX

COMMISSION ON CIVIL RIGHTS,
Washington 25, D.C., November 18, 1959.

Re: Larche v. Hannah et al.
C.A. No. 7479

DEAR GENERAL ROGERS: We urge that the necessary steps be taken to advance the above case on the calendar of the Supreme Court for the following reasons:

So long as the court order restraining the Commission from conducting voting hearings is in effect, we cannot in all good conscience hold further hearings, even though the order by its expressed terms is limited to the Western District of Louisiana.

In view of the requirement that we must file our final report with the President and the Congress not later than September 9, 1961, this delay is a serious handicap.

The conduct of voting hearings in other districts in that State or, for that matter, in other States where we have received voting complaints, if undertaken before the Larche case is finally determined, would only result in cumulative litigation, delay and unwarranted expenditure of money, time and personnel.

The effective operation of this Commission requires that we obtain by sworn testimony and by reliable

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documentary evidence the necessary facts on which to make our report. It is is apparent in our statute that this is to be done by hearings and by the use of the subpoena power. Based upon our experience, these powers delegated to the Commission in the law are essential to the performance of its proper duties.

It is our earnest hope, therefore, that the Supreme Court may hear argument in this matter in January and dispose of it as soon as possible thereafter. Otherwise, we face the grave possibility that half the time the Congress has provided in the extended life of the Commission may be lost.

Sincerely yours,

(S) GORDON M. TIFFANY
Gordon M. Tiffany.

The Honorable WILLIAM P. ROGERS,
The Attorney General.

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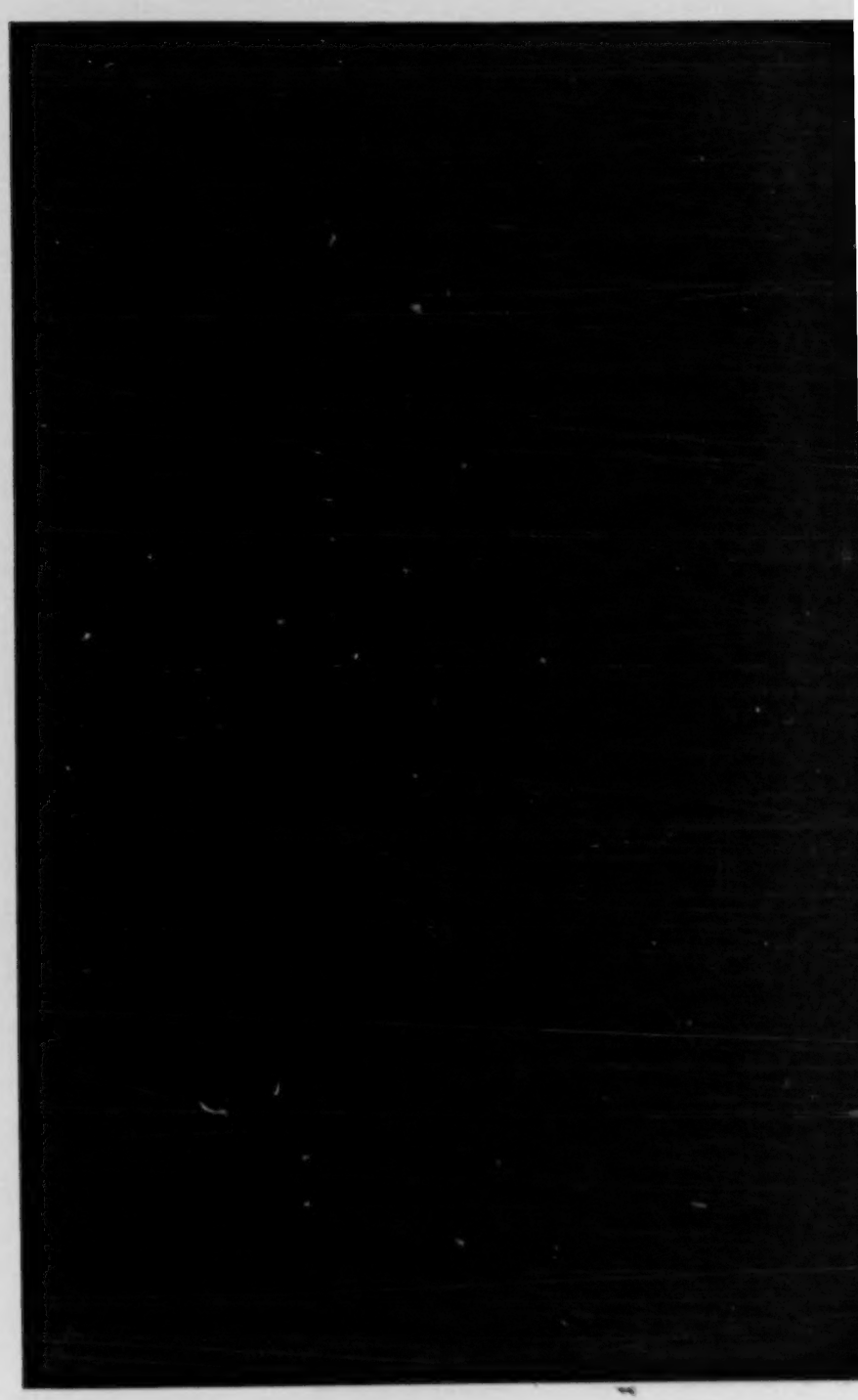

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Miscellaneous:

American Bar Association, Special Committee on Individual Rights as Affected by National Security, Appendix to Report on Congressional Investigations (1954) — Page 43, 50

Botterud, *The Joint Committee on the Conduct of the Civil War* (M.A. thesis, Georgetown Univ., 1949) — 46

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Carr, *The House Committee on Un-American Activities* (1952) — 43

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 549

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 550

JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE APPELLANTS IN NO. 549 AND THE PETITIONERS IN NO. 550

OPINIONS BELOW

The separate opinions of the United States District Court for the Western District of Louisiana (L. 244;

S. 29)[1] are not yet reported.[2] A prior opinion of the district court, granting appellees' and respondents' application for a temporary restraining order, is reported at 176 F. Supp. 791 (L. 74).

JURISDICTION

The judgments of the district court were entered on November 9, 1959 (L. 271; S. 30). In No. 549, notice of appeal to this Court was filed on November 12, 1959 (L. 272). The jurisdictional statement in No. 549 was filed on November 27, 1959. The jurisdiction of this Court over the appeal rests on 28 U.S.C. 1253.

In No. 550, notice of appeal to the Court of Appeals for the Fifth Circuit was filed on November 19, 1959, and the record was docketed in that court on November 20, 1959 (S. 32B, 35). The case has not been heard or decided by the court of appeals. The petition for a writ of certiorari prior to judgment was filed on November 27, 1959. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED[3]

The Civil Rights Act of 1957 directs the Commission on Civil Rights to "investigate allegations in writing under oath or affirmation that certain citi-

[1] References to the record in No. 549 (the *Larche* case) will be designated "L.", and in No. 550 (the *Slawson* case), "S."

[2] The opinion of the district court in *Slawson*, No. 550, incorporates by reference the opinion of the three-judge district court in *Larche*, No. 549 (S. 29).

[3] The issue presented in both cases is identical except for the fact that in *Slawson*, No. 550, the plaintiffs were private individuals rather than voting registrars.

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zens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin * * *."

The question presented is whether the district court erred in enjoining the Commission from holding a scheduled hearing under the Act, where it appeared that (a) the plaintiffs[4] are voting registrars or citizens who were subpoenaed to appear as witnesses at the hearing; (b) the Commission, considering all complaints submitted to it as confidential, denied plaintiffs' request, in advance of the hearing, for the names of persons making allegations against them and the contents of such allegations; and (c) the Commission's rules of procedure governing hearings provide that interrogation of witnesses shall be conducted only by members of the Commission or its staff.

STATUTORY PROVISIONS AND RULES INVOLVED

The Civil Rights Act of 1957 (71 Stat. 634, 42 U.S.C. 1975, *et seq.*) provides:

> Sec. 101 [42 U.S.C. 1975]. COMMISSION ON CIVIL RIGHTS.
>
> (a) *Establishment.*
>
> There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").
>
> * * * * *
>
> Sec. 102 [42 U.S.C. 1975a]. RULES OF PROCEDURE.
>
> (a) *Opening statement.*

[4] Throughout this brief, appellees in No. 549 and respondents in No. 550 will generally be referred to as "the plaintiffs."

The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) *Copy of rules.*

A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) *Attendance of counsel.*

Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) *Censure and exclusion of counsel.*

The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) *Defamatory, degrading, or incriminating evidence.*

If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) *Requests for additional witnesses.*

Except as provided in this section and section 1975(f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) *Release of evidence taken in executive session.*

No evidence or testimony taken in executive session may be released or used in public ses-

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sions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) *Submission of written statements.*

In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) *Transcripts.*

Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) *Witness fees.*

A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) *Restriction on issuance of subpena.*
The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

* * * * *

SEC. 104 [42 U.S.C. 1975c]. DUTIES; REPORTS; TERMINATION.

(a) The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and

(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957.

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(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

SEC. 105 [42 U.S.C. 1975d]. POWERS.

* * * * *

(f) *Hearings; issuance of subpenas.*

The Commission, or on the authorization of the Commission any subcommittee of two or more members, a least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a (j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

(g) *Aid of courts in enforcing subpenas.*

In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear

before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

The Rules of Procedure, adopted on July 1, 1958, by the Commission on Civil Rights, in pertinent part provide:

3. * * *

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may

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tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

STATEMENT

The facts of these two cases are not in dispute, and are based upon the stipulations of the parties and uncontradicted pleadings and affidavits filed in the district court.

On January 23, 1959, Jack P. F. Gremillion, the Attorney General of Louisiana, sent a letter to each registrar of voters in Louisiana stating that (1) he had advised Gordon M. Tiffany, the Staff Director of the Commission on Civil Rights, that Louisiana law made the State Attorney General the legal adviser for all registrars in any hearing or investigation before a federal commission, and that (2) Mr. Tiffany had assured Mr. Gremillion that the latter would be informed prior to the investigation or questioning of any registrar (Pl. Ex. A, L. 146).

On March 12, 1959, Col. A. H. Rosenfeld, Jr., a member of the Commission's staff, interviewed Mrs. Lannie Linton,[8] registrar of voters for Claiborne Parish (Affidavit of Mr. Gremillion, L. 143). On March 14, 1959, Mrs. Linton's personal attorney, W. M. Shaw, wrote to Mr. Tiffany, asserting that Col. Rosenfeld had stated at the interview that the Commission had on file four sworn statements charging Mrs. Linton with depriving citizens in Claiborne

[8] Mrs. Linton is one of the plaintiffs in No. 549 (L. 1).

Parish of their voting rights by reason of color, race, religion or national origin; that Mrs. Linton knew these allegations to be false; and that she wished to prefer charges of perjury against the affiants. Demand was made upon the Commission to forward copies of the affidavits so that they could be presented to a grand jury (Pl. Ex. C, L. 148). Further interviews were conducted by Col. Rosenfeld with registrars for the Parishes of Caddo and Webster (Affidavit of Mr. Gremillion, L. 143).

On April 14, 1959, Mr. Tiffany, replying to Mr. Shaw's letter of March 14, stated that the Commission, at a meeting held April 10, 1959, had considered and denied Mr. Shaw's request for copies of affidavits filed with the Commission, and that the Commission had issued the following statement (Pl. Ex. G, L. 150):

> The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints.

A copy of this letter was sent to Mr. Gremillion (Pl. Ex. F, L. 150).

On May 13, 1959, Mr. Tiffany wrote to Mr. Gremillion, asserting that the Commission had authorized the former to prepare and forward interrogatories to

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Mr. Gremillion (Pl. Ex. M, L. 157). The interrogatories were enclosed (Pl. Ex. M, L. 157–158). Mr. Gremillion replied on May 28, asserting that the registrars of voters in the parishes involved had been furnished the interrogatories, and had instructed Mr. Gremillion to advise the Commission that the interrogatories would not be answered because, *inter alia*, they were not accompanied by specific complaints or the names of the complainants (Pl. Ex. N, L. 158–159).

On May 29, Mr. Tiffany replied, by telegram, that the interrogatories covered specific allegations received by the Commission, but that it had not agreed to furnish those allegations or any information which would disclose the identity of the affiants. He requested that the completed interrogatories be received in the Commission's office by June 5 (Pl. Ex. O, L. 161–162). A letter from Mr. Tiffany to Mr. Gremillion, also dated May 29, 1959, confirmed the telegram (Pl. Ex. P, L. 162).[6]

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[6] The record also contains an exchange of letters in May 1959, between Mr. W. Wilson White, then Assistant Attorney General in charge of the Department of Justice's Civil Rights Division, and Mr. Gremillion, concerning a request, made by the Department in December 1958, for permission to inspect the registration records in Webster Parish in connection with an investigation by the Department of alleged violations of laws within the Department's jurisdiction relating to discrimination against voters (Pl. Ex. H and I, L. 151). Mr. Tiffany, who had been sent a copy of Mr. Gremillion's letter to Mr. White, wrote to the former on May 18, 1959, that there is no connection between the Commission and the Department; that they operate under different authorizations of law; and that the Commission "has from its inception been only a fact-finding body * * *." (Pl. Ex. J, L. 155).

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On June 2, 1959, Mr. Gremillion wrote to Mr. Tiffany, requesting reconsideration of his letter of May 28, 1959, and repeating his assertion that the registrars should be furnished with the nature and source of the complaints (Pl. Ex. Q, L. 163). On June 4, 1959, Mr. Tiffany stated in reply that the matter of the interrogatories would be placed before the Commission at its next meeting (Pl. Ex. R, L. 164). By letter dated June 11, 1959, Mr. Tiffany advised Mr. Gremillion that "the Commission, at its official meeting held here yestereday, June 10, 1959, authorized a hearing on Louisiana voting complaints pursuant to Sec. 105(f) of the Civil Rights Act of 1957, 71 Stat. 634. The hearing is scheduled to be held on July 13, 1959 in Shreveport, Louisiana" (Pl. Ex. S, L. 164–165).

Subsequently, between June 29 and July 6, subpoenas *duces tecum* were served on the plaintiffs in No. 549, who were voting registrars for certain parishes in Louisiana, to appear at this hearing and to bring to the hearing various voting and registration records within their custody and control (L. 4, 16–18). During approximately the same period of time, subpoenas were served on the plaintiffs in No. 550, who were private citizens, to appear at the same hearing (S. 23). On July 8, 1959, Mr. Tiffany wrote to Mr. Gremillion, enclosing copies of the Civil Rights Act and of the Commission's Rules of Procedure, and drawing Mr. Gremillion's attention to Section 102(h) of the Act, which permits witnesses to submit, subject to the discretion of the Commission, briefs and pertinent sworn statements for inclusion in the record (Pl. Ex. T, L. 165).

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On July 10, 1959, the plaintiffs filed two separate complaints under 28 U.S.C. 1331 [7] in the District Court for the Western District of Louisiana seeking to enjoin the members of the Commission from holding the hearing scheduled for July 13 in Shreveport (L. 3, S. 1). Both complaints alleged that the Commission was acting illegally in refusing to furnish the names of persons making allegations against the plaintiffs and the contents of their allegations, and in refusing to allow them to confront and cross-examine the persons making such allegations (L. 5–11; S. 4–5). In addition, the complaint in *Larche* alleged that the Act creating the Commission did not constitute "appropriate legislation within the meaning of Section (2) of the XV Amendment" (L. 4).[8] Both complaints sought a temporary restraining order, and a preliminary and permanent injunction (L. 4; S. 6–7).[9] On

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[7] The complaints in *Larche* also asserted as bases for jurisdiction, 28 U.S.C. 1332, 28 U.S.C. 2282, 28 U.S.C. 2284, and 42 U.S.C. 1985 (L. 3); the complaint in *Slawson* also cited 42 U.S.C. 1985 (S. 1).

[8] The complaint in *Larche* also urged (1) that Louisiana law imposes limitations upon who may inspect public records, and that appellants did not qualify for such inspection (L. 6); (2) that Louisiana law prohibited the registrars from removing the records "except upon an order of a competent court", and that the Commission was not a "competent court" (L. 6); (3) that obedience to the subpoenas of the Commission would cause appellees irreparable damage, in that they would be forced to violate Louisiana law (L. 7); and (4) that compliance with the subpoenas would necessitate the closing of the offices of the registrars during the hearing, a result which neither Congress nor the Commission allegedly had power to bring about (L. 9).

[9] The complaint in *Larche* also sought a declaratory judgment that the Civil Rights Act of 1957 was unconstitutional (L. 3–4).

the same day that the complaints were filed, the district court (Dawkins, J.) held a combined hearing on the prayers for temporary restraining orders, and on July 12 issued temporary restraining orders and rules to show cause why a preliminary injunction should not be issued (L. 87–89; S. 14). The Commission subsequently filed answers stating that the complaints failed to state a claim upon which relief could be granted and that plaintiffs had not suffered legal injury (L. 138; S. 20).[10]

Inasmuch as the complaint in *Larche* sought an injunction restraining the operation of an Act of Congress as in violation of the Constitution, a three-judge court was convened pursuant to 28 U.S.C. 2282 (L. 122). But since plaintiffs in *Slawson* did not challenge the constitutionality of the Civil Rights Act of 1957, that case was heard by Judge Dawkins alone. As Judge Dawkins was also a member of the three-judge court, a combined hearing was had on both cases on August 7, 1959 (L. 187).

At the oral argument in the district court, Government counsel indicated that the Commission, on previous occasions, has permitted questioning from those present at its open hearings and conferences (L. 211). A stipulation was introduced in *Larche* [11] showing that

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[10] The Commission also filed a motion for summary judgment in *Slawson* which was not acted upon (S. 18). The three-judge court in its opinion in *Larche*, however, dismissed this motion which had been made only in *Slawson* (L. 261).

[11] A stipulation was also filed in *Slawson* reciting that the stipulation in *Larche* "shall be considered for all purposes as having been entered into between counsel in this suit insofar as it is relevant and material thereto" (S. 23). The complaint in *Slawson* also stated: "Complainants have been further informed

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the Commission had received 67 complaints that certain citizens in Louisiana had been deprived of the right to vote on account of race, color, religion or national origin; that a number of these complaints alleged generally that the plaintiffs had caused such deprivations; that the Commission, on June 10, 1959, authorized a hearing on Louisiana voting complaints to be held in Shreveport, Louisiana, on July 13, 1959; and that the Commission duly issued subpoenas and caused them to be served on plaintiffs in connection with the hearing (L. 169–170). Six plaintiffs introduced affidavits which stated that they would be irreparably injured if they were required to testify at the proposed Commission hearing (L. 166–167; see S. 23–24).

In an opinion filed on October 7, 1959, the three-judge court held in *Larche* that the Civil Rights Act of 1957 was an appropriate exercise of legislative power under the Fourteenth and Fifteenth Amendments and under Article I of the Constitution (L. 247–250). The court concluded, however, with Circuit Judge Wisdom dissenting (L. 261), that the Commission's rules and procedures were not authorized by Congress and were invalid (L. 250–258). On November 9, 1959, the court entered an order enjoining the Commission from holding any hearings in the Western District of Louisiana in which the "registrars, accused of depriving others of the right to vote, would

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and believe that such written allegations are in the nature of charges against your complainants which, if true, would constitute ground for criminal and civil proceedings against them" (S. 3).

be denied the right of apprisal, confrontation and cross-examination" (L. 271).[12] On November 9, 1959, Judge Dawkins also filed an opinion in *Slawson,* incorporating by reference the opinion filed in *Larche* (S. 30),[13] and entered an injunction identical with that entered in *Larche* (except that "plaintiffs" was substituted for "registrars") (S. 30).

SUMMARY OF ARGUMENT

The district court has held that the rules of the Civil Rights Commission, insofar as they deny witnesses, in advance of a hearing, the right to know the contents and sources of allegations against them, and, at the hearing, the rights of confrontation and cross-examination, present a serious constitutional question; and that, in view of *Greene* v. *McElroy,* 360 U.S. 474, such rules must be based on explicit authorization by Congress. The court found that the Civil Rights Act of 1957 did not explicitly authorize the Civil Rights Commission to adopt such procedures. The court concluded, therefore, that the Commission would exceed its powers by holding any hearings at

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[12] The court's opinion does not specify whether the injunction is permanent or interlocutory. Judge Dawkins, however, in issuing the temporary restraining order in *Larche*, entered a rule to show cause why a preliminary injunction should not be issued (L. 125). Argument was thereupon made to the three-judge court. Because the opinion of the three-judge court decides the merits of the case, and because the order of the three-judge court is unrestricted in terms, it would appear that the order is a permanent injunction. Whether the order is final or interlocutory, however, it is appealable to this Court under 28 U.S.C. 1253.

[13] The opinion recites that a preliminary injunction is being issued (S. 29).

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which these procedures were followed, and it accordingly enjoined the holding of the Commission's scheduled hearing.

The district court's reliance upon *Greene* was entirely misplaced. First, Congress clearly authorized the Commission's rules of procedure which are here challenged. And second, this case (unlike *Greene*) does not involve an "area of questionable constitutionality" (360 U.S. at 506). The Commission was conducting an investigation, not a trial. Its purpose was to obtain facts for submission to Congress and the President; it was not inquiring into, or determining, the guilt or innocence of particular individuals.

I

After full consideration, Congress deliberately rejected proposals that witnesses before the Commission should be given (1) advance notice of the contents of allegations made against them, (2) the opportunity to inspect such materials in the Commission's files, and (3) the right to confront and cross-examine persons making allegations against them. Instead, Congress specifically incorporated into the Civil Rights Act of 1957 the so-called "fair play" rules applicable to the investigating committees of the House of Representatives. These rules give witnesses extensive procedural protections but do not provide for notice, confrontation, or cross-examination.

II

No serious constitutional question is involved.

A. The Commission, by the terms of the Civil Rights Act of 1957 (Section 104), has the authority only to "investigate allegations," "study and collect informa-

tion," "appraise the laws and policies of the Federal Government," and submit reports to the President and Congress. It functions solely as an investigative arm of the legislative and executive branches of the government. It is not an adjudicatory body. It has no power to decide, to determine rights or obligations, to impose sanctions, to indict, to punish, or to deprive any person of life, liberty, or property.

B. No court has ever held that an investigative body is constitutionally obliged to follow the procedures which the district court imposed on the Commission on Civil Rights. Instead, all judicial precedent holds to the contrary: that notice, confrontation, and cross-examination need not be provided by bodies which possess power only to investigate. And even in a federal criminal case, the defendant has only a limited right of pre-trial discovery and is not entitled to obtain, in advance of the trial, disclosure of the identity of informants and to receive copies of statements given by them to the government. And, of course, even in a criminal case, a defendant could not secure an injunction against the trial by showing that his rights to confrontation and cross-examination would not be respected.

Long-standing historical practice of investigatory bodies validates the Commission's procedures. In proceedings before investigatory tribunals of all sorts—grand juries, legislative committees, and executive fact-finding agencies—neither pre-hearing notice, confrontation, nor cross-examination has ever been regarded as constitutionally required. Generally speaking, investigating bodies have not followed ju-

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dicial trial procedures. And on such occasions as these rights have been afforded, it was as a matter of grace, not right.

ARGUMENT

INTRODUCTION

One of the most important functions which Congress, in the Civil Rights Act of 1957, assigned to the Commission on Civil Rights is the investigation of allegations in writing that certain citizens of the United States are being deprived of the right to vote because of their color, race, religion, or national origin. For the purpose of carrying out the provisions of the Act, Congress authorized the Commission to hold hearings, and to issue subpoenas for the attendance and testimony of witnesses and the production of written or other matter, in accordance with rules promulgated by the Commission. The statute itself expressly prescribes rules of procedure to be followed by the Commission at its hearings, and the Commission has also promulgated various implementing rules.

Under the Commission's rules and procedures, a witness subpoenaed to appear at a scheduled hearing of the Commission is not entitled, in advance of the hearing, to be informed of the names of persons making the allegations being investigated and the contents of such allegations; nor is the witness entitled at the hearing to direct confrontation and cross-examination of such persons (except, of course, that he is confronted by those affiants who appear as witnesses at the hearing).

The Act provides that witnesses at hearings may

be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights (Sec. 102(c)). It also provides that "If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses" (Sec. 102(e)). The Commission's implementing rules provide that "Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel" (Sec. 3(i)) and that "If the Commission * * * determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf" (Sec. 3(j)).

In the instant cases the district court held that these basic provisions of the Commission's procedures are unauthorized and invalid: that there is "nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the Act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination" (L. 251–252); and that, since the procedures and rules of the Commission are *ultra*

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vires, the proper judicial relief is to enjoin the Commission from holding the hearing (L. 261).

We submit that the rulings below are manifestly erroneous. In Point I, we shall show that the procedures followed by the Commission on Civil Rights, so far as pertinent, were clearly authorized by Congress, as the provisions and the legislative history of the Act unmistakably demonstrate. We believe that, as to the Commission's procedures here, there exists explicit authorization by Congress of the character which the Court found to be lacking in *Greene* v. *McElroy*, 360 U.S. 474. At all events, the problem here is not analogous to that in the *Greene* case, because—as we shall show in Point II—there is no serious constitutional question since the Commission was conducting an investigation, not a trial.

I

CONGRESS CLEARLY AUTHORIZED THE COMMISSION'S PROCEDURES

Congress devoted considerable attention to the question of the procedures which should be followed by the Commission, and it deliberately rejected the proposal that the Commission should be required to give witnesses at its hearings the right to be furnished with advance notice of the names of persons making allegations against them or the content of such allegations, or the right to confrontation and cross-examination such as are afforded defendants in a criminal trial.

A. Section 102 of the Act (*supra*, pp. 3–6) establishes a detailed set of procedures to be followed by

the Commission at its hearings[14] and, in so doing, guarantees to witnesses important rights. It provides that:

(1) the Commission must begin its hearings with an opening statement by the chairman announcing the subject of the hearing;

(2) witnesses must be provided with a copy of the rules of the Commission;

(3) witnesses may have their own counsel present for the purpose of advising them concerning their constitutional rights;

(4) the Commission shall receive evidence in executive session, where such evidence may tend to defame, degrade, or incriminate any person;

(5) witnesses may request the subpoenaing of additional witnesses;

(6) witnesses may submit sworn statements for inclusion in the record in the discretion of the Commission.

This precise and detailed catalogue of procedural rights shows on its face the deep concern of Congress with this problem. This is confirmed by the Act's legislative history.

When the 1956 civil rights bill (H.R. 627) was reported out by the House Judiciary Committee, it had no procedural provisions regulating the hearings of the proposed Commission. H. Rept. No. 2187, 84th Cong., 2d Sess. During debate on the floor, Representative Dies of Texas proposed certain

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[14] In contrast, Congress has generally not provided such detailed mandatory rules for investigatory commissions (see *infra*, pp. 54–56).

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amendments designed to add procedural safeguards (102 Cong. Rec. 13542), and his proposals were written into the bill before it passed the House (102 Cong. Rec. 13998–13999). The bill, however, died in the Senate.

The Dies amendments (see Appendix, *infra*, pp. 63–65) would have specifically provided that (1) "[i]nsofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing * * * shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented" (Section 101(r)); that (2) "[i]f a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: * * * (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence * * *; (iv) to cross-examine (in person or by counsel) such adverse witness" (Section 101(s)); and (3) that "[i]f a person is adversely affected, by evidence or testimony given in executive session or by material in the Commission's files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have prior to public release of such evidence or testimony * * * or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse

witness or material as will be made public or the subject of a public hearing" (Section 101(f)). Thus, the Dies amendments provided virtually the same rights of notice, confrontation, and cross-examination for which plaintiffs have contended in the instant cases.

The following year (1957), several civil rights bills, were introduced in Congress which embodied the substance of H.R. 627 as it had been amended and passed by the House. The principal such bill was S. 83, introduced on January 7, 1957, by Senator Dirksen, then ~~Senator~~ Senate minority whip, and others, ~~who~~ which described the procedures to be followed by the Commission in precisely the same language as that in the Dies amendments to H.R. 627 (see Appendix, *infra*, pp. 63–65). On the other hand, H.R. 6127, the other major civil rights bill, which bore the name of Representative Celler, Chairman of the House Judiciary Committee,[15] incorporated the so-called House "fair play" rules (see Appendix, *infra*, pp. 61–63) as its only provision for regulating the procedures of the Commission. These rules, in contrast to H.R. 627 and S. 83, stated,

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[15] The history of H.R. 6127 is as follows:

H.R. 1151 and H.R. 2145 were introduced by Representative Keating and Celler, respectively, on January 3, 1957, and were considered by Subcommittee No. 5 of the House Judiciary Committee. The subcommittee struck out all the provisions of H.R. 2145, and inserted in their place the provisions of H.R. 1151. The Judiciary Committee then approved the bill with instructions to the chairman to report out a "clean bill", embodying the proposals approved by the committee. This clean bill, bearing the number 6127 and Mr. Celler's name, was introduced March 19, 1957. H. Rept. No. 291, 85th Cong., 1st Sess., pp. 2–3.

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as to notice, merely that the chairman of the Commission must announce the subject of the hearing in an opening statement, but it made no provision for advance notice or disclosure to witnesses, or any other person against whom adverse testimony had been received. Similarly H.R. 6127, with regard to confrontation and cross-examination, provided only that counsel could accompany witnesses to investigative hearings "for the purpose of advising them concerning their constitutional rights." As Judge Wisdom pointed out in his dissent below, this was but another way of saying "that the lawyer (or his client) cannot cross-examine an adverse witness" (L. 262).

Testifying both at the House hearings on various civil rights bills and Senate hearings on S. 83, Attorney General Brownell supported the enactment of the House rules instead of the "restrictive" procedures contained in the Senate bill. During the hearings in the House, the following colloquy took place between Representative Keating and the Attorney General:[16]

> *Mr. Keating* [referring to the procedures required by H.R. 627] * * * They are considerably more restrictive than the rules * * * for conduct of regular congressional committees. If this committee should decide to include a provision for the conduct of hearings held by the Commission which was in general similar to those set up in the rules of the House for the conduct of congressional committees, would you see any objection [to] that?

[16] Hearings before Subcommittee No. 5, House Judiciary Committee, 85th Cong., 1st Sess., p. 593.

> *Mr. Brownell.* I am confident that the caliber of the Commission would be such that you could count on them to give the fairest opportunity to witnesses, to be sure that their legitimate rights are protected. Neverheless [sic], if it is demed [sic] advisable by the Congress to set up a special set of rules for that purpose, I think it is extremely important that everyone join in seeing to it that proper rules of procedure are followed by the Commission. I would have no objection.

Subsequently, on February 14, 1957, Attorney General Brownell stated before a subcommittee of the Senate Judiciary Committee: [17]

> Now there is one other addition to S. 83 that I would like to make special reference to and that is the provision for rules of procedure contained in section 102 on pages 2 to 10 of S. 83. These rules of procedure are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable. We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission.
>
> Favoring as I do the imposition of proper rules of procedure upon all governmental committees and commissions which conduct public hearings in order adequately to protect the individuals called before them, I am reluctant to take a

[17] Hearings, Subcommittee on Constitutional Rights, Senate Judiciary Committee, 85th Cong., 1st Sess., pp. 14–15.

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stand opposing the imposition of the rules here involved.

Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules which may have to be tested out under the courts and this is only a 2-year Commission and you might have to spend those 2 years studying the rules instead of getting at the facts.

Another reason why I think perhaps the substance of these rules should be eliminated from this particular bill is that the caliber of the men whom the President would appoint to the Commission would be such that they could be counted on to give the fairest opportunity to witnesses and protect all of their legitimate rights.

On July 12, 1957, during the debate in the Senate, Senator Talmadge drew to the attention of the Congress that H.R. 6127 did not contain certain procedural protections—some of which are the very same procedural rights for which plaintiffs are now contending (103 Cong. Rec. 11504):

> No provision is made for notification of persons against whom charges are to be made. No provision is made for persons adversely affected by testimony taken by the Commission to be present when they are accused or later to confront and cross-examine their accusers.

Nevertheless, the views of Attorney General Brownell and Representative Keating prevailed. Congress adopted the House rules, provided for in H.R. 6127, in Section 102 of the Act, 42 U.S.C. 1975a (*supra*, pp. 3–6)

(103 Cong. Rec. 9516, 13900, 16478). Thus, Congress specifically rejected statutory requirements embodying the very rights which plaintiffs are claiming; it adopted, instead, a detailed set of procedural provisions which clearly do not provide for pre-hearing notice, confrontation, or cross-examination.

B. The meaning of the procedural provisions of the Act is made apparent in yet another way. Since, as shown above, Section 102 of the Act substantially incorporated the House "fair play" rules,[18] that section was obviously intended to have the same meaning as the equivalent House Rules. As Representative Keating remarked (103 Cong. Rec. 8497):

> *Investigations by the Commission will be bound by rules of procedure modeled after those applicable to congressional committees.* A copy of these rules must be made available to every witness who appears before the Commission. [Emphasis added.]

And, as Representative Celler stated (103 Cong. Rec. 8491):

> *The rules of procedure of the Commission are the same as those which govern the committees of the House.* For example, the chairman is required to make an opening statement as to the subject of the hearing. Witnesses are furnished with a copy of the Commission's rules and may be accompanied by counsel. The chairman is authorized to punish breaches of order by censure and exclusion. Protection is furnished to

[18] For a comparison between the pertinent House rules and Section 102 of the Act, see the Appendix, *infra*, pp. 61–63.

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> witnesses when it appears that a person may be the subject of derogatory information by requiring such evidence to be received in executive session, and affording the person affected the right to appear and testify, and further to submit a request for subpena of additional witnesses. [Emphasis added.]

The legislative history of the House "fair play" rules demonstrates conclusively that Congress, in accord with the procedures historically followed by its investigative committees (see *infra*, pp. 43–51), did not intend to provide a right of confrontation and cross-examination. In 1953, Representative Keating introduced H. Res. 29 (83d Congress), which would have given witnesses before legislative committees a right of cross-examination, limited to one hour unless extended by vote of the committee (Hearings before the Subcommittee on Legislative Procedure of the House Committee on Rules, 83d Cong., 2d Sess., p. 7).

Subsequently, Representative Keating expressed doubt as to the wisdom of extending the right of cross-examination to witnesses before the committees and suggested substituting a provision for the submission of written interrogatories (*id.* at p. 13):

> * * * That is in lieu of the right of cross-examination, which is given in House Resolution 29, and I am inclined to think that we have not progressed in this field to the point where we are ready to give the right of cross-examination to the counsel for a person who may have had his name brought into hearings in a manner which adversely affected him, or which he thinks does so.

On February 17, 1954, while the hearings were still pending, Representative Scott, the committee chairman, introduced H. Res. 447 which stated that counsel for witness shall be permitted "to address pertinent questions to other witnesses whose testimony pertains to his client, by written interrogatories submitted to the chairman or by cross-examination, for such length of time that the committee deems reasonable" (*id.* at pp. 249–251).

The Subcommittee on legislative procedure, on March 9, 1954, tentatively adopted H. Res. 447 and submitted it to the full Committee on Rules for suggestions and changes. 101 Cong. Rec. 221. Suggestions continued to be received and considered concerning the resolution, and it was ultimately modified in the form contained in H. Res. 571, introduced on June 1, 1954. 101 Cong. Rec. 219. H. Res. 571 deleted any mention of the right to oral cross-examination (*ibid.*).

Resolution 571, which carried the approval of the subcommittee, was introduced into the 84th Congress as H. Res. 61, when the subcommittee made its report to Congress. 101 Cong. Rec. 218. Concerning the right to cross-examination, the subcommittee commented (101 Cong. Rec. 221):

> The right of cross-examination: Opinions are widely divided on whether counsel for a witness should ever be permitted to cross-examine his client or other witnesses directly. After carefully considering the alternatives, your subcommittee decided to recommend the use of written interrogatories only. In appropriate circumstances, the committee could still permit limited cross-examination if it wishes to do so;

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thus the omission merely serves to discourage potential abuses by contentious advocates.

Thus, the proposals, which originated with a provision for the right of cross-examination, finally came out of committee with only the right to submit written interrogatories to the committee to be asked by the committee staff.

On February 22, 1955, Representative Doyle introduced H. Res. 151 which provided only that witnesses should have the right to have counsel present to advise them of their constitutional rights. 101 Cong. Rec. 1912. After a brief hearing, the Committee on Rules reported H. Res. 151 to the House with the recommendation that it be passed. H. Rept. No. 159, 84th Cong., 1st Sess.

In the debate on the floor of the House, Representative Scott asked that H. Res. 447 or H. Res. 61 (*supra*, p. 30) be substituted for H. Res. 151 and had them reprinted in the Congressional Record. 101 Cong. Rec. 3574–3575. He contended that one of the major defects of H. Res. 151 was that it failed to provide a right of cross-examination. 101 Cong. Rec. 3573. But the House rejected this view, and passed H. Res. 151 without any provision for written interrogatories or cross-examination. 101 Cong. Rec. 3585.

Since the passage of the "fair play" rules, House committees have not interpreted them as requiring confrontation and cross-examination, and these privileges have rarely been provided.[19] And, similarly,

[19] On the basis of replies from fifteen House committees, it was stated in 1957 that House committees recognize no right to oral cross-examination. 45 Calif. L. Rev. 347, 348, note 10, 351. And the rules of the Committee on Un-American Activities explicitly deny any right to cross-examination (*id.* at p. 352).

such committees have not considered themselves bound, under the House rules, to furnish witnesses prior to hearing with the contents of allegations made against them. In sum, as Judge Wisdom emphasized (L. 263):

> The House "Fair Play Rules" were drawn for the conduct of congressional investigating committees. They were the indirect product of innumerable legal articles, judicial dicta, and editorials. They were the direct product of careful study. It is safe to say that when the House "Fair Play Rules" were adopted as Section 102 of the Civil Rights Act of 1957 every member of the House and Senate regarded that action as an explicit declaration that Congress affirmatively rejected rules extending to witnesses the rights of notice, confrontation, and cross-examination; that, instead, Congress authorized and directed the Civil Rights Commission to follow its more limited "Fair Play Rules".

II

THE COMMISSION'S PROCEDURES AS TO NOTICE, CONFRONTATION, AND CROSS-EXAMINATION ARE CONSTITUTIONALLY VALID

Because the district court decided that the procedures of the Commission as to notice, confrontation, and cross-examination were not authorized by the Act, it did not reach the question of the constitutionality of these procedures.[30] Nevertheless, the court's views on

[30] The plaintiffs in *Larche* also argued that the Civil Rights Act of 1957 was unconstitutional because it is not appropriate

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constitutionality, which we believe were manifestly erroneous, constituted the basic premise of the reasoning which led to its decision. The court concluded that the procedures lacked statutory authorization because it believed that the validity of these procedures raised "a serious constitutional question" and, therefore, under this Court's decision in *Greene* v. *McElroy*, 360 U.S. 474, express statutory authorization must be found.

We submit that the issue here does not fall within "the area of questionable constitutionality" which would justify reliance on the *Greene* decision (360 U.S. at 506). We may note, initially, that the opinion in the *Greene* case expressly left undecided the contention that persons whose rights are "adjudicated" in administrative proceedings have a constitutional right of confrontation and cross-examination (360 U.S. at 508). No court, however, has ever held that a governmental body engaged in a purely *investigatory* proceeding is required to follow the procedures which the district court imposed upon the Commission in this case. The whole history of the practices of investigatory bodies, and all relevant judicial precedents, show that these rights have never been recognized in investigatory proceedings, such as those which the Commission has here been enjoined from conducting.

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legislation under Article I of the Constitution and the Fourteenth and Fifteenth Amendments. The court below rejected this contention (I. 247–250).

A. THE INVESTIGATIVE ROLE OF THE COMMISSION

Section 104 of the Civil Rights Act of 1957, 42 U.S.C. 1975c, explicitly describes the duties and functions of the Commission as that of an investigative body:

> § 1975c. Duties; reports; termination
>
> (a) The Commission shall—
>
> (1) *investigate allegations* in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;
>
> (2) *study and collect information* concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and
>
> (3) *appraise the laws and policies* of the Federal Government with respect to equal protection of the laws under the Constitution.
>
> (b) The Commission shall *submit interim reports to the President and to the Congress* at such times as either the Commission or the President shall deem desirable, and shall *submit to the President and to the Congress a final and comprehensive report* of its activities, findings, and recommendations not later than two years from September 9, 1957.[21]

[21] On September 28, 1959, Congress extended the full limit for the submission of the Commission's report for two years. P.L. 86-383, 73 Stat. 724.

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(c) Sixty days after the submission of its final *report and recommendations* the Commission shall cease to exist. [Emphasis added.]

These duties are also the limits of the Commission's powers since it has no powers other than to carry out its statutory duties by means of hearings and investigations.

It is apparent from the language of the statute that all the functions of the Commission are directed toward the preparation of reports of legislative recommendations and of facts upon which legislative recommendations might be based.[22] Specifically, the Commission has no duties—or powers—of an adjudicatory nature. It does not hold trials. It is neither a prosecutor nor a judge. It does not "decide" cases; it does not determine rights or liabilities. It cannot impose sanctions, indict, or punish; it cannot deprive anyone of his liberty or property; it cannot either directly, or, as was found in *Greene* v. *McElroy*, indirectly, "deprive [anyone] of his job" (360 U.S. at 508. In short, the Commission has taken, and can take, no action which can determine or affect the legal rights of the plaintiffs in these cases. The most that the Commission could do would be to report its findings to the President and Congress—and the nature of

[22] The legislative history demonstrates that the Act was intended by Congress to create "a fact finding and investigatory body." H. Rept. No. 291, 85th Cong., 1st Sess., p. 8. Similarly, Representative Keating, one of the authors of the Act, stated that "[t]he Commission is empowered to study and investigate. It will not have power to prosecute * * *." 103 Cong. Rec. 8497.

those findings is completely conjectural in regard to a proceeding which has been brought to a halt before a single witness can be heard.

Nonetheless, despite the investigatory nature of the Commission's proceedings, the district court found that the hearings would subject plaintiffs to "public opprobrium and scorn", "the distinct likelihood of losing their jobs", and the possibility of criminal prosecution (L. 252).[23] The court's characterization of the present or future effect of the scheduled hearing on the plaintiffs is, necessarily, in the realm of speculation.[24] To be sure, such consequences may, and fre-

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[23] The district court stated in *Larche* that the registrars were being investigated for conduct violating both federal and state law (L. 252). Apparently, what the court meant was that, if the registrars were found to have, under color of law, wilfully deprived any person of any rights, privileges, or immunities protected by the Constitution or federal law in violation of 18 U.S.C. 242, they would also have violated the state statute (LSA-R.S. 14: 134) which prohibits a public officer from intentionally failing or refusing to perform his duty, or intentionally performing his duty in an unlawful manner. See also, as to *Slawson*, footnote 11, p. 14, *supra*.

[24] Mr. Justice Cardozo's dissent in *Jones* v. *Securities & Exchange Commission*, 298 U.S. 1, 33—subsequently cited with approval by the Court in *Oklahoma Press Pub. Co.* v. *Walling*, 327 U.S. 186, 217, 203, note 30—is, perhaps, also apt here:

"* * * A commission which is without coercive powers, which cannot arrest or amerce or imprison though a crime has been uncovered, or even punish for contempt, but can only inquire and report, the propriety of every question in the course of the inquiry being subject to the supervision of the ordinary courts of justice, is likened with denunciatory fervor to the Star Chamber of the Stuarts. Historians may find hyperbole in the sanguinary simile."

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quently do, result from purely investigatory proceedings. But, we submit, the fact that such incidental consequences can, or do, flow from an investigatory proceeding does not convert the fact-finder into an adjudicatory body. The crucial question is whether the proceeding is an investigation or a trial. This view is fully supported by the decisions of this Court which have refused to impose on investigatory proceedings the same procedures as are required for adjudicatory actions, even when serious economic or criminal consequences are at least as likely to result as in the instant case. See *infra*, pp. 38–40. Cf. *McGrain* v. *Daugherty*, 273 U.S. 135, holding that the duty of a witness to appear before a legislative fact-finding body cannot be avoided merely because his testimony might subject him to criminal prosecution.

B. THE PROCEDURES HISTORICALLY FOLLOWED, AND JUDICIALLY UPHELD, IN INVESTIGATORY PROCEEDINGS

The Commission's lack of power to adjudicate any of the plaintiffs' legal rights is crucial in determining what procedures are constitutionally required in hearings before it. Historically, notice, confrontation, and cross-examination have rarely been afforded witnesses before investigating bodies—whether grand juries, legislative committees, or executive fact-finding agencies—and when these procedures have been afforded, they have been regarded as a matter of grace and not of right. Moreover, this Court has upheld the power of such investigative bodies to hold hearings in which

these procedures, which would have been essential in an adjudicatory proceeding, have not been provided.[25]

Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 294, involved almost precisely the same contention as plaintiffs make here concerning disclosure of the contents of allegations made to the Civil Rights Commission. There, the Tariff Commission refused to reveal to an interested party in one of its proceedings both information furnished by another party and that discovered by the Commission's investigators. The Court, in upholding the Commission's action, stated, in an opinion by Mr. Justice Cardozo, that (*id.* at 318):

> The Tariff Commission advises; these others ordain. There is indeed this common bond that all alike are instruments in a governmental process which according to the accepted classification is legislative, not judicial * * *. Whatever the appropriate label, the kind of order that emerges from a hearing before a body with power to ordain is one that impinges upon legal rights in a very different way from the report of a commission which merely investigates and advises. The traditionary forms

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[25] In numerous cases involving procedures different from those in issue here, the courts have emphasized the distinction between an adjudicatory proceeding, in which additional safeguards are required, and investigatory proceedings. See, *e.g.*, *United States* v. *Los Angeles R.R.*, 273 U.S. 299, 310; *Gonzales* v. *United States*, 348 U.S. 407, 412, note 4; *Interstate Commerce Commission* v. *Baird*, 194 U.S. 25, 43–44; *Bowles* v. *Baer*, 142 F. 2d 787, 788–789 (C.A. 7); *Genecov* v. *Federal Petroleum Board*, 146 F. 2d 596, 597 (C.A. 5), certiorari denied, 324 U.S. 865.

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> of hearing appropriate to the one body are unknown to the other. What issues from the Tariff Commission as a report and recommendation to the President, may be accepted, modified, or rejected. If it happens to be accepted, it does not bear fruit in anything that trenches upon legal rights.

And in *In re Groban,* 352 U.S. 330, 332, the Court stated:

> Prosecution of an individual differs widely from administrative investigation of incidents damaging to the economy or dangerous to the public. The proceeding before the Fire Marshal was not a criminal trial, nor was it an administrative proceeding that would in any way adjudicate appellants' responsibilities for the fire. It was a proceeding solely to elicit facts relating to the causes and circumstances of the fire.

The Court therefore concluded that the witness was not constitutionally entitled to the assistance of counsel at the hearing. Similarly, in *Anonymous* v. *Baker,* 360 U.S. 287, the Court, relying on *Groban,* held that a witness testifying in an investigation of unethical practices of attorneys conducted by a state judge has no constitutional right to have counsel present in the hearing room. Since *Groban* and *Baker* decided that witnesses who appear before investigatory bodies considering possible criminal violations have no constitutional right to have counsel with them, it is *a fortiori* that such witnesses likewise had no right of cross-examination. It is difficult to imagine that witnesses may have a constitutional right of cross-examination

while not having the right to counsel which would make the former right effective.[26]

1. *Judicial Proceedings—Grand Juries.* Even in judicial proceedings involving adjudications affecting the basic rights of life and liberty, notice, confrontation, and cross-examination are not automatically afforded at every stage. Thus, in *Williams* v. *New York,* 337 U.S. 241, this Court upheld the imposition of the death sentence, based in part on information given the sentencing judge not known to the defendant and concerning which he had no opportunity to confront and cross-examine the witnesses who had provided it. Moreover, the pre-hearing notice of the contents and sources of allegations made against them—which plaintiffs claim is their constitutional right—is not even provided on the issue of guilt or innocence in Federal criminal prosecutions. Criminal defendants have but a limited right of pre-trial discovery (Rules 16 and 17, F.R. of Crim. P.; cf. *Bowman Dairy Company* v. *United States,* 341 U.S. 214, 221), and are not normally entitled to pre-trial disclosure of the identity of informants and of statements given by them to the government. 18 U.S.C. 3500; *Palermo* v. *United States,* 360 U.S. 343. A list of prosecution witnesses is available before trial as of right only in capital cases. 18 U.S.C. 3432.

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[26] On the other hand, it would not be illogical to allow counsel to be present, while denying the right to cross-examination—the very practice followed by the Commission and many other investigatory bodies. Thus, the dissents in *Groban* and *Baker,* in contending that there is a constitutional right to counsel in investigatory hearings, are not inconsistent with our position in this case.

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Like the Commission, the grand jury is an investigatory body. A witness appearing before a grand jury, particularly if he is a suspect, may obviously be drastically affected by its determinations. If indicted, he may suffer real damage to his reputation and otherwise. Yet a witness before a grand jury has never been thought to have the right to be furnished with notice of the contents of allegations made against him or the names of persons making such allegations. The secrecy of grand jury proceedings has been zealously guarded throughout our history (see, most recently, *Pittsburgh Plate Glass Co.* v. *United States,* 360 U.S. 395), and a witness has no right either to interfere with that secrecy or to refuse to testify if the nature of the allegations against him is not disclosed.

Similarly, there is no right of witnesses before grand juries to confront and cross-examine other witnesses. *United States* v. *Scully,* 225 F. 2d 113, 116 (C.A. 2), certiorari denied, 350 U.S. 897. Such a right would seriously interfere not only with the secrecy of the proceedings, but with the historic informality of grand jury procedure necessary for it to function effectively. See *Costello* v. *United States,* 350 U.S. 359, 362–364. Indeed, a witness has been held not to have the right to have counsel present in the grand jury room, even when he is a potential defendant. See *United States* v. *Scully, supra.*

The general absence of safeguards for witnesses appearing before grand juries has been accepted without serious question, doubtless because the grand jury merely investigates and reports. Another body, a court of law, in which the accused is given the full

panoply of procedural protections, must adjudicate before his life, liberty, or property can be taken. Viewed in this light, the parallel between grand juries and investigatory legislative and administrative bodies is clear, and has repeatedly been recognized by the courts. *Oklahoma Press Pub. Co.* v. *Walling, supra,* 327 U.S. at 216; *In re Groban, supra,* 352 U.S. at 333; *Genecov* v. *Federal Petroleum Board, supra,* 146 F. 2d at 597; *Bowles* v. *Baer, supra,* 142 F. 2d at 788–789; *In re Securities and Exchange Commission,* 84 F. 2d 316 (C.A. 2); *Boehm* v. *United States,* 123 F. 2d 791 (C.A. 8).

2. *Legislative committees.* The history of congressional investigations is particularly significant since the Civil Rights Act of 1957 gives the Commission the duty of appraising "the laws and policies of the Federal Government with respect to equal protection of the laws" and reporting on this appraisal to Congress (42 U.S.C. 1975c). Similarly, Representative Keating, an author of the Civil Rights Act (see note 15, *supra,* p. 24), stated that "[t]he purpose of the Commission is primarily to determine whether there is need for further legislation in the field of civil rights" and that therefore the Commission would use the rules of procedure followed by congressional committees (103 Cong. Rec. 8497). Thus, the Commission has a function paralleling that of an investigating committee of Congress.

Congress has throughout its history held to the view that judicial procedures are not necessarily applicable to investigations of its committees. For ex-

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ample, in 1808, a Senate committee rejected a witness' claims to various procedural rights, which were made, the committee said, "as if the committee had been a circuit court of the United States." Annals of Congress, 10th Cong., 1st Sess., p. 56 (see *infra*, pp. 45–46). Similarly, in 1878, the Senate Committee on Privileges and Elections, investigating an accusation of election fraud, refused to follow a suggestion that the Committee observe, as far as possible, "the rules which obtain in courts of justice". S. Rept. No. 540, 45th Cong., 2d Sess., p. III.[27]

a. More specifically, the history of congressional investigations shows that witnesses before congressional committees have rarely been given the opportunity to confront and cross-examine witnesses making allegations against them. See American Bar Association, Special Committee on Individual Rights as Affected by National Security, Appendix to Report on Congressional Investigations (1954), pp. 67–68. Sometimes, however, witnesses have been allowed to submit interrogatories to the committee. Thus, it is clear that such opportunity for questioning adverse witnesses as has been afforded has been provided, not as a matter of right, but of grace on the terms deemed appropriate by Congress.

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[27] See Liacos, *Rights of Witnesses Before Congressional Committees*, 33 B.U.L. Rev. 337, 359, 360; Carr, *The House Committee on Un-American Activities* (1952), p. 463; Dimock, *Congressional Investigating Committees* (1929), p. 153; Eberling, *Congressional Investigations* (1928), pp. 283, 390; McGeary, *The Developments of Congressional Investigative Power* (1940), p. 80; Kauper, *Address to Annual Conference of the Judges of the Sixth Circuit*, 27 Ohio Bar, pp. 607, 616, 620.

The following are among the many instances in which the right of cross-examination has either been expressly refused or has not been provided (see also A.B.A. Report, *supra*, pp. 73–91).

In 1796, the House of Representatives amended and adopted a report of its Committee of Privileges, which had been instructed to report on a mode of proceeding in the cases of Robert Randall and Charles Whitney, both accused of bribing House members. After debate on the question whether cross-examination should be allowed, the report, as amended, stated that

> * * * no question shall be put to any member on the part of the prisoner, by way of cross-examination, except leave be first given by the House; and every such question shall be put by the Speaker * * *.

Annals of Congress, 4th Cong., 1st Sess., p. 195.

In 1800, a Senate Committee of Privileges was appointed to prepare a form of proceedings to govern an investigation of William Duane, a newspaper editor who had been accused of publishing articles defaming the Senate. The report of the Committee as submitted by the committee, and amended and adopted by the Senate, made no provision for confrontation or cross-examination. Annals of Congress, 6th Cong., 1st Sess., p. 117. The Senate rejected a motion to permit Duane "to have assistance of counsel for his defence," but allowed him to be heard through counsel "in denial of any facts charged against [him] or in

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excuse and extenuation of his offence" (*id.* at pp. 118, 119).[28]

In 1807, a special committee of the Senate, under the chairmanship of John Quincy Adams, was appointed to inquire whether Senator John Smith of Ohio, who had been indicted for treason as an alleged accomplice of Aaron Burr, "should be permitted any longer to have a seat" in the Senate. Annals of Congress, 10th Cong., 1st Sess., p. 55. The Committee proceeded to collect evidence most of which, as Smith complained (*id.* at 66) and Senator Adams confirmed (*id.* at 74), was either taken *ex parte* or without allowing Smith to interrogate adverse witnesses. Before the committee, Senator Smith "claimed, as a right, to be heard in his defence by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the committee had been a circuit court of the United States" (*id.* at 56). The Committee's report, in rejecting these claims, pointed out that the Committee was a fact-finding body without power to adjudicate. Thus, the Committee emphasized that its function was "to report * * * the facts relating to the conduct of Mr. Smith", that "the authority of the Committee extends only to proposal, and not to decision", that the committee members "have never conceived themselves vested with authority to try Mr. Smith", and that "it is before the Sen-

[28] Duane protested that he found himself "deprived of all professional assistance, under the restrictions which the Senate have thought fit to adopt", and refused to appear. Annals of Congress, 6th Cong., 1st Sess., p. 122.

ate itself that your committee conceived it just and proper that Mr. Smith's defence of himself should be heard" (*id.* at 56).

Subsequently, during the proceeding before the Senate as a whole, Smith's counsel was permitted to submit written interrogatories to be asked by the President of the Senate of one of the witnesses who had testified adversely against him before the committee (*id.* at 89). Smith, however, never received an opportunity to cross-examine his other accusers, whose depositions were nevertheless admitted before the Senate, causing Smith's counsel to protest strongly the denial of the opportunity to confront and cross-examine his accusers (*id.* at 212, 213).

During the Civil War, the Joint Committee on the Conduct of the Civil War conducted its hearings without affording witnesses counsel or any opportunity for cross-examination. Botterud, *The Joint Committee on the Conduct of the Civil War* (M.A. thesis, Georgetown University, 1949), p. 41.

In 1908, a House committee appointed to investigate charges of corrupt practices by the Electric Boat Company of New Jersey and certain members of the House, adopted a resolution permitting submission of written interrogatories, to be asked witnesses by the committee chairman in his discretion. The resolution provided (H. Rept. No. 1727, 60th Cong., 1st Sess., p. 11):

> *Resolved,* That Hon. George L. Lilley, the Electric Boat Company, and such other parties affected by the investigation as may desire to do so, may be accompanied by and consult with

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> counsel in all public hearings of the committee; and that in view of these circumstances *and in accordance with the well-established precedents of both Houses of Congress* for insuring the orderly conduct of such investigation, *the examination of all witnesses shall be conducted by a member of the committee* to be designated for that purpose from time to time by the chairman; and that *such questions or course of examination as parties interested, or their counsel, may desire shall be submitted in writing to the committee.* [Emphasis added.]

A special committee selected by the House in 1911 to investigate violations of the Sherman Antitrust Act adopted the following rule of procedure:

> Counsel may attend witnesses summoned before this committee, but may not participate in the proceedings, either by way of examination or argument, *except upon permission given by the committee,* from time to time, as the occasion arises. [Emphasis added.]

Cannon's Precedents of the House of Representatives, p. 530.

In the investigation of lobbying, conducted in 1935 and 1936 by a special Senate Committee (79 Cong. Rec. 12770), no cross-examination was afforded. Hearings Before a Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 1st and 2d Sess., p. 1469; McGeary, *The Developments of Congressional Investigative Power* (1940), p. 81. And in 1945 and 1946, submission of written interrogatories by interested parties was invited by the Joint Committee on the Investigation of the Pearl Harbor

Attack. Ford, *The Lawyer and The Congressional Investigation,* 21 So. Cal. L. Rev. 249.[29]

As shown above (*supra,* pp. 29–31), while the House of Representatives was considering the adoption of uniform rules between 1953 and 1955, proposals to permit cross-examination were discussed and expressly rejected. At the same time, the Senate was also considering uniform rules, which, however, were never adopted. An analysis of the rules of procedure of various congressional committees[30] was read into the record of these hearings on the proposed Senate rules. It showed that the House Ways and Means Internal Revenue Subcommittee and the Senate Committee on Government Operations permitted submission of written interrogatories by a person under investigation when a majority of the committee approved; that the House Armed Services Defense Activities Subcommittee permitted oral cross-examination with the approval of the majority of the subcommittee; and five other committees of the House and Senate did not provide in their rules for any type of cross-examination. Hearings, Subcommittee on Rules of the Senate Committee on Rules and Administration on S. Res. 65, 146, 223, 249, 253, 256, S. Con. Res. 11 and 86, 83d Cong., 2d Sess., Pt. 3, pp. 141–142.

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[29] Ford, writing in 1948, stated (p. 243):

"[O]n rare occasions, Congressional Committees have allowed cross-examination of witnesses by attorneys for interested parties. Standard practice is otherwise, however. Committee counsel generally invite the submission of questions in writing by the attorneys for interested parties."

[30] The analysis was prepared by Will Maslow, General Counsel of the American Jewish Congress.

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During these same hearings, Senator Tydings, who had served in 1950 as chairman of a subcommittee of the Senate Committee on Foreign Relations, testified that cross-examination had not been afforded in hearings before his committee (*id.* at p. 374). Senator Brewster indicated that the Truman War Investigatting Committee allowed submission of written interrogatories, but "necessarily reserved full discretion as to the character and duration of the questioning" (*id.* at p. 345) and that the joint committee of the Senate investigating the removal of General MacArthur did not allow any cross-examination (*id.* at p. 344). In 1955, the Senate Committee on Rules and Administration issued a report, containing proposed uniform rules for the conduct of Senate investigations, which stated (S. Rept. No. 2, 84th Cong., 1st Sess., p. 20):

> The practice of permitting persons not members of the Committee or its staff to participate in interrogation is by no means widespread, and has been limited to administrative assistants of Senators who are committee members.

The present practice of congressional committees is likewise to deny confrontation and cross-examination as of right. House committees have interpreted the 1955 House "fair play" rules as not providing a right of confrontation and cross-examination (see note 19, *supra*, p. 31). The Internal Security Subcommittee of the Senate Committee on the Judiciary provides by rule that "Interrogation of witnesses at subcommittee hearings shall be conducted on behalf of the subcommittee by Members and authorized staff

personnel only." Rule 9, Resolutions and Rules Adopted by the Internal Security Subcommittee of the Committee on the Judiciary of the United States Senate (adopted February 7, 1955). Similarly, the Select Committee on Improper Activities in the Labor or Management Field (the so-called McClellan Committee) allows the submission of written interrogatories by a person who is the subject of an investigation in public hearings. With the consent of a majority of the members of the committee, the questions in the interrogatories are asked of the witness by the Chairman, a member of the committee, or by committee counsel. Rule 11, Rules of Procedure, Senate Select Committee on Improper Activities in the Labor or Management Field (adopted February 5, 1957); accord, Rule 17, Rules of Procedure Governing Investigations of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration (adopted August 21, 1958).

Congressional committees have sometimes permitted confrontation and cross-examination.[21] Generally,

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[21] In 1792, for example, cross-examination was afforded to witnesses in the hearings conducted by a select committee appointed to inquire into the failure of the expedition commanded by General St. Clair. See St. Clair, *A Narrative of the Manner in Which the Campaign Against the Indians Was Conducted in the Year 1791 Under the Command of Major General St. Clair* (Phila., 1812). And, in 1924, witnesses before the Brookhart-Wheeler Committee investigating the Department of Justice were cross-examined by counsel representing Attorney General Harry Daugherty. Hearings before the Select Committee on Investigation of the Attorney General under S. Res. 157, 68th Cong., 1st Sess., pp. 6, 233. For other examples see Taylor, *Grand Inquest* (1955), pp. 243–244, 332, notes 6, 7; A.B.A. Report *supra*, pp. 68–73.

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however, witnesses have, at most, been allowed to submit written interrogatories. Thus, the history summarized above, while it does not purport to be complete, demonstrates that Congress has not regarded confrontation and cross-examination as constitutionally required.

b. While there is considerably less evidence of congressional practice concerning the contents and source of allegations made against a witness, we submit that this reflects general understanding that a witness had no possible right to such information.[32] The only evidence that we have found, moreover, supports the conclusion that witnesses before congressional committees have no right to this information.

In 1839, a select committee of Congress, appointed to investigate alleged defalcations among the collectors in the New York Customs House, called upon a customs collector to furnish certain correspondence. The collector questioned the authority of the committee to make the demand upon him, claiming that he had the right to be informed whether the committee or any of its members charged him with being a defaulter. The committee repeated its request for the

[32] See, for example, the following unqualified statement of the rights of witnesses before legislative committees:

"There is no right to counsel, no right to cross-examination of hostile or friendly witnesses, no right to confrontation of witnesses, or accusers, and *no right to be informed of the nature and cause of an accusation.* While certain of these rights have been recognized by some committees, the grant or denial of them today is within committee discretion [emphasis added]." Liacos, *Rights of Witnesses before Congressional Committees*, 33 B. U. L. Rev. 337, 360, 361.

correspondence, and agreed to the following resolution:

> That this committee cannot recognize the authority or right whatever in any collector, receiver, or disburser of the public money to call upon "the committee" or *"any of its members"* to prefer or disavow a *charge* of his *"being a defaulter,"* before such officer sends *"the correspondence"* of his *"office,"* when required under the authority of the House of Representatives *"to send for persons and papers,"* to enable its committee "to inquire into, and make reports of any defalcations among collectors, receivers, and disbursers of the public money *which may now exist"*; nor can this committee or "any of its *members"* tell whether Mr. Hoyt is, or is not, *now* a defaulter, until by examination of the "persons and papers" for which it has sent and will send * * *.

H. Rept. No. 313, 25th Cong., 3rd Sess., pp. 326, 327; Eberling, *Congressional Investigations*, *supra*, p. 143.

3. *Executive Agencies.* As far as we have been able to determine, federal executive agencies, like Congressional committees, have never recognized a constitutional right of witnesses to confrontation and cross-examination in non-adjudicatory proceedings. Moreover, these procedures are often not, in fact, provided. We have been unable to find any solid evidence as to the practice of such agencies in providing witnesses with the contents and sources of allegations against them. In our view, this lack of evidence is the result of general acknowledgment that no such right of notice exists—a right which, as we have

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shown (*supra,* pp. 40, 41), does not exist in advance of trial even in criminal cases.

a. Since the Civil Rights Commission has the duty of reporting on its investigations to the President, the historical practice of presidential commissions is particularly relevant. Such presidential commissions, however, have followed a wide variety of procedures.[33] In many instances, the commissions have held no hearings.[34] Other commissions, with adjudicatory powers, have held trial-like hearings.[35] But as to investigatory commissions, a review of the hearings and reports of various commissions does not reveal any instance of cross-examination, and one example of a commission specifically refusing to allow such a procedure.

In 1941, President Roosevelt appointed the Roberts Commission (with Mr. Justice Owen J. Roberts as chairman) to ascertain the facts relating to the Japanese attack upon Pearl Harbor, and especially to determine whether any derelictions of duty or errors of judgment on the part of the United States Army or Navy personnel had contributed to the enemy success. Exec. Order 8983, Dec. 18, 1941, 6 Fed. Reg. 6569. Such

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[33] It has been said that "[a]ny attempt to say how a presidential commission normally conducts itself is impossible because they have not shown any tendency to follow a set pattern." Marcy, *Presidential Commissions* (1945), p. 97.

[34] *E.g.*, the committee appointed in 1931 to investigate the charges of the Navy League. Marcy, *supra*, p. 90.

[35] *E.g.*, the Commission To Investigate Alleged Frauds on Creek Indians (House Doc. No. 452, 25th Congress, 2d Sess.), which actually settled land claims and accordingly followed a trial-type procedure. See also *Commission for Ascertaining and Settling Private Land Claims in California* (San Francisco, 1852).

interested parties as Admiral Kimmel and General Short, the Navy and Army commanders at Pearl Harbor, were not permitted to hear the testimony of other witnesses, or to have the assistance of counsel. Thus, they were neither informed of the evidence given before the Commission nor given the opportunity to cross-examine witnesses. U.S. News and World Report, April 2, 1954, p. 83.

Generally, Presidential commissions have either had no rules governing their procedure or the rules were so general as to shed no light on the notice and confrontation issues involved here.[36] Thus, the rules of procedure of the Temporary National Economic Committee provided only that in the examination of witnesses, "the rules of evidence shall be observed but liberally construed." Hearings before the Temporary National Economic Committee (Investigation of Concentration of Economic Power), vol. 1, p. 193. And the Report of the Commission appointed by the President to Investigate the Conduct of the War Department in the War with Spain (1899) states (p. 110) that rules of evidence "as applied in legal proceedings" were not adhered to in the investigation, and that considerable latitude was allowed. See, also, Sen. Doc. No. 415, 64th Congress, 1st Sess., Report of Commission on Industrial Relations (1915), p. 20.

Normally, Congress and President have not im-

[36] The two studies of this subject, Marcy, *Presidential Commissions*, and Galloway, *Presidential Commissions* (in *Editorial Research Reports*, May 28, 1931) do not indicate that the issues have ever arisen, nor that rules of procedure covering these subjects have been adopted.

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posed any mandatory procedural rules on the commissions. For example, the Tariff Commission of 1916 was merely directed by statute to conduct certain investigations. 39 Stat. 796. The Roberts Commission appointed by the President and vested with subpoena power by Congress was empowered to prescribe its own rules of procedure. Exec. Order 8983, Dec. 18, 1941, 6 Fed. Reg. 6569; 55 Stat. 853. The statute establishing the Commission on Foreign Economic Policy (Randall Commission) in 1953 gave it authority to hold hearings and take testimony at its discretion. 67 Stat. 473. Thus, as Judge Wisdom noted below, "The inclusion in the body of the statute of mandatory rules of procedure [for the Commission on Civil Rights] is unique in legislation setting up an investigatory commission" (L. 266, note 10).[37]

Thus, presidential commissions have generally been given authority to establish procedures appropriate to their particular functions. Such flexibility is likely to be essential for effectively conducting their frequently broad investigations. Thus, it has been stated as one of the reasons for the success of British commissions: "* * * each commission determines for itself its own procedure: whether to hold its meetings in public, what witnesses to call, and the method to

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[37] During the debate on the 1956 proposed civil rights bill, Representative Celler stated (102 Cong. Rec. 13546):

"None of the commissions that I know of that have been approved and set up by this House, the Hoover Commission and numberless other commissions, have had to work under rules of the type the gentleman from Texas [Rep. Dies; see *supra*, pp. 22–24] now promulgates and wants to graft onto this commission."

pursue in examining them. * * * No hard and fast rule is followed." Davies, *Brains in Government—Commissions to Find the Facts,* in *Forum,* May 1937, pp. 310–315.

b. Regulatory agencies which are vested with power to punish violations of the acts they administer make a sharp distinction between rules governing the conduct of preliminary investigations on informal complaints and those governing the investigation after a formal complaint is filed. Preliminary investigations can result only in formal complaints; subsequent investigations may result in an order—that is, an adjudication—as to which Section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)) gives every party the right of cross-examination. But the Administrative Procedure Act does not govern non-adjudicatory proceedings. And the rules of the regulatory agencies governing preliminary investigations appear to be uniform in making no provision for cross-examination. See, *e.g.,* Food and Drug Administration Regulations under the Federal Caustic Poison Act, 21 CFR § 285.17, and under the Federal Milk Import Act, 21 CFR § 290.52; National Labor Relations Board Regulations Governing Investigations of Unfair Labor Practice Charges, 29 CFR (1958 Supp.) § 101.4; Rules Applicable to Proceedings Before the Commodity Exchange Commission, 17 CFR § 0.53; Department of Agriculture Rules of Practice under the Federal Seed Act, 7 CFR § 201.151, and under the Perishable Commodities Act, 7 CFR § 47.3(b).

The rules of the Federal Trade Commission provide with regard to "[i]nvestigational hearings, as distin-

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guished from hearings in adjudicative proceedings, * * * including inquiries initiated for the purpose of determining whether or not a respondent is complying with an order of the Commission or the manner in which decrees in suits brought by the United States under the antitrust acts are being carried out * * *" (16 CFR (1958 Supp.) § 1.34), that witnesses required to testify or to submit documentary evidence (16 CFR (1958 Supp.) § 1.40):

> * * * may be accompanied and advised by counsel, but counsel may not, as a matter of right, otherwise participate in the investigation.

Similarly, the Rules of Practice of the Atomic Energy Commission distinguish between "formal" and "informal" hearings (10 CFR § 2.708):

> *Hearings, formal and informal*
> Hearings will be either formal or informal. Formal hearings will be held in cases of adjudication, as that term is used in the Administrative Procedure Act, unless the parties otherwise agree, and in such other cases as may specifically be directed. Informal hearings will normally be held for the purposes of obtaining necessary or useful information, and affording participation by interested persons, in the formulation, amendment, or rescission of rules and regulations.

No confrontation or cross-examination is provided for with respect to informal hearings, even though they may assume some of the aspects of formal hearings, *i.e.*, the subpoenaing of witnesses. 10 CFR § 2.720.

The reason for the distinction in procedures of the regulatory agencies between investigatory and adjudi-

catory proceedings seems clear. If a formal complaint, leading to agency action, is filed, the subject of the inquiry will have all the rights attaching to a trial-type hearing; but it is unnecessary to afford such procedures in a proceeding which cannot result in an order determining his rights. The analogy to the present case is clear. If any court proceedings should be commenced against the registrars as the result of information adduced at a Commission hearing, they will have, in such proceedings, full rights of confrontation and cross-examination.

c. State executive agencies with investigatory functions have likewise often operated with procedures which do not give witnesses the right of cross-examination. For example, New York provides by law for the appointment by the Governor, in his discretion, of so-called "Moreland Commissions," charged with investigating state agencies. Laws of New York, 1907, ch. 539, as amended by ch. 131 of the Laws of 1928, Consol. Laws of N.Y., Executive Law, par. 6. In a study of the Moreland Commissions, it has been observed that

> Fortunately, the general practice has been to deny the right to counsel to put questions to their clients or to engage in cross-examination.

Missall, *The Moreland Act: Executive Inquiry in the State of New York* (1946), p. 59.[38]

---

[38] The author explains that counsel is not needed to protect constitutional rights because (p. 60):

"* * * Commissioners have no authority to punish. Should a Commissioner, in an extreme situation, make a party appear guilty of illegal behavior by the type of evidence that the Com-

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New York has also established a Code of Fair Procedure for Investigating Agencies, Laws of New York, 1954, ch. 414. Applicable both to legislative and executive investigations, it affords protections to witnesses similar to those that would be afforded by the Commission on Civil Rights. Thus, it provides (Section 73) that "[c]ounsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the agency shall ask the witness such of the questions as it may deem appropriate to its inquiry" (par. 3).[39]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that jurisdiction of the appeal should be noted

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missioner permits to be presented or as a result of the manner in which he introduces evidence, the criminality would have to be determined in a court of law."

[39] As already noted, p. 40, *supra*, the plaintiffs' claim that the Constitution accords them the right to pre-hearing disclosure of the identity of the complaining witnesses and the contents of their allegations would, if upheld, give them a right which even defendants in a federal criminal trial do not possess. The plaintiffs' contention also fails to take into account the countervailing interests of (1) the complaining witnesses, the disclosure of whose identity in advance of hearing might subject them to various kinds of pressure or intimidation (including possible indictment on criminal charges, cf. Statement, pp. 9–10, *supra*), and (2) the public, which would suffer from any "drying up" of sources of information bearing upon alleged denials of constitutional rights which Congress directed the Commission to investigate. To be sure, where a tribunal is making an adjudication of guilt or innocence of criminal charges, the rights of confrontation and cross-examination at the trial must be respected, regardless of any possible detriment in "drying up" sources of information. But here there is no trial, and no adjudication.

in No. 549 and the petition for certiorari should be granted in No. 550, and that the judgments of the district court should be reversed.

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DECEMBER 1959.

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APPENDIX

RULES OF THE HOUSE OF REPRESENTATIVES

Rule XI (26)

* * *

(i) The chairman at an investigative hearing shall announce in an opening statement the subject of the investigation.

(j) A copy of the committee rules, if any, and paragraph 26 of rule XI of the House of Representatives shall be made available to the witness.

(k) Witnesses at investigative hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(l) The chairman may punish breaches of order and decorum, and of professional ethics on the part of counsel, by censure and exclusion from

PROVISIONS OF THE CIVIL RIGHTS ACT OF 1957 (SECTION 102, 42 U.S.C. 1975a)

(a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by cen-

the hearings; and the committee may cite the offender to the House for contempt.

(m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

(1) receive such evidence or testimony in executive session;

(2) afford such person an opportunity voluntarily to appear as a witness; and

(3) receive and dispose of requests from such person to subpena additional witnesses.

(n) Except as provided in (m), the chairman shall receive and the committee shall dispose of requests to subpena additional witnesses.

(o) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.

sure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in

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public sessions without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1000, or imprisoned for not more than one year.

(p) In the discretion of the committee, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The committee is the sole judge of the pertinency of testimony and evidence adduced at its hearing.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(q) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the committee.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

H.R. 627, 84th Cong., 2d Sess., as amended and as it passed the House, and S. 83, 85th Cong., 1st Sess., provided in part:

Part I. Section 102.

* * * * *

RIGHTS OF PERSONS ADVERSELY AFFECTED BY TESTIMONY

(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his

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defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.

U.S GOVERNMENT PRINTING OFFICE: 1959

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JAMES R. BROWNING,

SUPREME COURT OF THE UNITED STATES

No. 549

JOHN A. HANNAH, ET AL.,
Appellants,

versus

MARGARET M. LARCHE, ET AL.,
Appellees.

On Appeal from the United States District Court for the Western District of Louisiana.

BRIEF FOR THE APPELLEES.

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SUPREME COURT OF THE UNITED STATES

No. 549

JOHN A. HANNAH, ET AL.,

Appellants,

versus

MARGARET M. LARCHE, ET AL.,

Appellees.

On Appeal from the United States District Court for the Western District of Louisiana.

BRIEF FOR THE APPELLEES.

QUESTION PRESENTED.

The question presented is whether the District Court erred in enjoining the Commission from holding a scheduled hearing under The Civil Rights Act of 1957 (71 Stat. 634, 42 U.S.C. 1975, *et seq.)* where it appeared that (a) these plaintiffs are public officials of the State of Louisiana designated as registrars of voters, who were subpoenaed by the Commission as witnesses in their own behalf at a hearing instigated by unnamed complainants with unknown complaints against plaintiffs, (b) whether the Commission, without congressional authority or presidential directive, could by a declaration of policy deny plaintiffs' requests, in advance of the hearing, for the

names of the persons making such complaints and the nature and contents thereof; (c) the rules of procedure by Congress and by the Commission depriving these plaintiffs of adequate legal representation; and (d) the right of Congress or the Commission to violate under the 14th Amendment the rules of fair play and the traditional forms of fair procedure without explicit action by the nation's law makers even if it is possible that the Constitution presents no inhibition.

CONSTITUTIONAL, STATUTORY AND RULES INVOLVED:

Article I, Sections 2, 4 and 8, of the Constitution of the United States.

Amendments 5, 6, 14, 15, 17 to the Constitution of the United States.

(See appendix.)

The Administrative Procedure Act, 5 U. S. C. 1001, *et seq.**

The Civil Rights Act of 1957, 42 U. S. C. 1975, *et seq.*

(See appellant's Brief p. 3.)

18 United States Code 242.*
42 United States Code 1983.*
Louisiana Revised Statutes 14:134.*
Louisiana Revised Statutes 18:221.*
* (See appendix.)

The Rules of Procedure adopted on July 1, 1958, by the Commission on Civil Rights. (L. p. 55.)

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Resolution adopted March 14, 1959, by the Commission on Civil Rights. (L. p. 14.)

STATEMENT.

The "Statement" contained in appellants' brief is supplemented as follows:

Up until the time that subpoenas were served on the plaintiffs to appear, Mr. Gremillion, counsel for plaintiffs by law, had had no notice whatsoever that these plaintiffs would be subpoenaed and up until the first Court hearing, had not been informed or had no idea of what scope of inquiry was to guide the Commission. L. 142-146.

The commission proposed to conduct a **one-day hearing** during which it was to take testimony from some **fifty-eight witnesses** and as well examine the **voluminous records of** each of the **seventeen registrars** which were subpoenaed. (L. 99, 104, 105.) (Emphasis supplied.)

At oral argument in the District Court, Government counsel indicated that the Commission, on previous occasions, had permitted questioning from those present at its open hearings and conferences (L. 211), but the Commission, by resolution (L. 14) and thereafter, refused to disclose the names of complainants or the information in the complaints, even at the scheduled hearing.

At oral argument in the District Court, Government counsel admitted that the Civil Rights Act is silent as to the authority of the Commission to deny or not to deny to these plaintiffs apprisal, confrontation and cross-examination (L. 211).

The record also contains an exchange of letters in May, 1959, between Mr. W. Wilson White, then Assistant Attorney General in charge of the Department of Justice's Civil Rights Division, and Mr. Gremillion, concerning a request, made by the Department in December, 1958, for permission to inspect the registration records in Webster Parish in connection with an investigation by the Department of alleged violations of laws within the Department's jurisdiction relating to discrimination against voters (Pl. Ex. H and I, L. 151). Mr. Tiffany, who had been sent a copy of Mr. Gremillion's letter to Mr. White, wrote to the former on May 18, 1959, that there is no connection between the Commission and the Department; that they operate under different authorizations of law; and that the Commission "has from its inception been only a fact-finding body * * *." (Pl. Ex. J, L. 155).

The legislative background of the Civil Rights Act of 1957 reflects that Mr. Brownell stated that the position which Mr. White, government counsel in the District Court, fills would be the same as that created by the statute establishing an assistant attorney general who would head up the division on Civil Rights, and also be the chief legal adviser to direct Government's legal activities in the field of Civil Rights. *U. S. Code Congressional and Administrative News*, 1957, volume 2, pages 1973-1979, 2009-2010.

> "The minority report in congress stated it is the understanding of the Commission, predicated upon the testimony of the Attorney General, that the individual authorized to be employed by this sec-

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tion will be so designated and given such responsibility (head of a Civil Rights Division)."

The majority report states that the reason for not specifically stating the title and duties of the newly authorized assistant, is purely one of internal management on the part of the Attorney General as head of the Department of Justice. *U. S. Code Congressional and Administrative News*, 1957, volume 2, pages 1972-1974. Mr. White represented the Commission on the trial of this matter in the lower court.

SUMMARY OF ARGUMENT AND INTRODUCTION.

The Commission on Civil Rights, itself, made and adopted certain rules of procedure which included those which Congress laid down by statute and other rules in addition thereto for the conduct of its hearings.

The District Court enjoined the Commission from conducting a hearing pursuant to these Commission-made rules of procedure whereby these plaintiffs were denied the right of apprisal, confrontation and cross-examination, there being no express or explicit authorization for such a denial.

Under its act, the Commission is to report to Congress findings and recommendations predicated upon its investigations and hearings. This has been done. The Commission's findings and conclusions of law published in this report, in part, state that a substantial number of negroes are being denied their right to vote in Louisiana through discriminatory application and administration of Louisiana registration laws. Plaintiffs, under the State law, are solely responsible and charged with the

administration of their state's registration laws. This adjudication alone concludes that state and federal laws have been violated by one or all of plaintiffs and published to Congress under mandate, to the President, also to the Nation.

I.

Comparison of *Greene v. McElroy*, 360 U. S. 474 with this cause reflects a striking similarity. Plaintiffs aggrieved were gainfully employed and because of their employment were brought into contact with the executive agency which had accusations against them which, if true, would have meant a loss of employment. Plaintiffs were denied the right to apprisal, confrontation and cross-examination which left them helpless to exonerate themselves of accusations. In the cause at bar compulsory process was used against plaintiffs, but was not available for their use and the accusations were informal indictments that plaintiffs had violated both State and Federal criminal statutes.

Greene is the culmination of historical judicial recognition of the traditional procedural safeguards of fair play.

Congress has established a national policy recognizing these safeguards of fair play by enacting the Administrative Procedural Act.

There is no state statute involved herein nor any state's policy in regard to investigations and the traditional procedural safeguards.

There is a serious constitutional question involved inasmuch as plaintiffs' rights to apprisal, confrontation,

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and cross-examination have been denied through executive interpretation of a questionable statute wherein no authority explicit or express can be found for the denial of plaintiffs' rights.

II.

The conduct of Commission's hearings is governed by the Administrative Procedure Act in that, (1) the Commission's statute does not exempt it from the provisions of the Administrative Procedure Act, and (2) the Commission in fact adjudicates at its hearings and in its report to Congress and the President. Its conclusion that plaintiffs have violated the law speaks for itself.

III.

Congress has only the legislative investigatory power to delve into those areas where it may constitutionally legislate.

1. Congress' only power to regulate elections and/or the right to vote are granted to it by Article I, Secs. 2, 4 and 8 and Amendments 14, 15 and 17 to the United States Constitution. The provisions of Article I and Amendment 17 gives to Congress the right to control the "time, place and manner," of federal elections or state primaries nominating party candidates therefor. The investigatory powers of the Commission are not restricted to these constitutional limitations but extend to all elections and to registration which is not within the purview of these provisions. Amendments 14 and 15 are restrictions preventing the denial of the right to vote occasioned by governmental action. Here again, the powers of the Com-

mission to investigate extend far beyond their limited constitutional grant.

2. The act itself creates a Commission of inquiry to investigate specific complaints against individuals accused of crimes. The creation by the legislative branch of an executive commission to perform a judicial function is a most grave departure from the separation of powers doctrine.

3. Conceding for the purpose of argument that the legislative branch of government would have the power to investigate itself the areas it assigned to the Commission, it does not have the power to delegate to the executive branch, the investigatory power which is purely and simply a part of the legislative function. That is investigation for the purpose of determining the necessity and advisability of new laws in certain fields. The assignment of this legislative function to the executive branch is clearly unconstitutional.

ARGUMENT.

I.

The Rules, Regulations and Policies, Under Which the Civil Rights Commission Seek to Hold a Hearing As Concerns Plaintiffs, Are Based Upon No Legal Authority, and Are Unlawful and Unconstitutional As Such Deny Plaintiffs' Rights to a Full, Fair and Impartial Hearing Under the Law with Benefit of the Traditional Procedural Safeguards.

(A) On Defendant's Failure To Inform Plaintiffs of the Scope and Subject Matter of Inquiry.

Plaintiffs have individually in their official capacities as Registrars of Voters received subpoenas which

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command them to appear before defendants at a certain time and place and to:

> ". . . testify what you may know relative to subject matters of inquiry committed by law to the consideration of said Commission." (L. pp. 16-17.)

Plaintiffs, then, refer to the statute to ascertain the scope and subject matter of inquiry:

> "(a) The Commission shall—
>
> "(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based."
>
> 42 U.S.C.A., 1975 (c) (a) (1).

The above purports to advise plaintiffs as to the subject matter of inquiry. Its scope is tainted with the "vice of vagueness".

Watkins v. United States, 354 U. S. 178.

And is so sweeping, uncertain, general and generic, that it could not in any manner inform plaintiffs of the scope and subject matter of inquiry with the degree of explicitness and clarity which is required by law.

Plaintiffs are affected by this executive agency action and jurisprudence clearly demands that defendants shall inform plaintiffs of the matters of fact and

law asserted, thereby establishing and appraising plaintiffs of the scope and subject matter of inquiry.

Jones v. Securities Commission, 298 U. S. 1;
Watkins v. United States, 354 U. S. 178.

In the *Jones* case the Supreme Court announced:

> "The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. An investigation not based upon specified grounds is quite as objectionable as a search warrant not based on specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring or by what it actually succeeds in bringing, to light."
>
> *Jones v. Securities Commission*, 298 U. S. 27.

In the *Watkins* case, Mr. Chief Justice Warren, the organ of the Court, declared upon this issue:

> ". . . It is obvious that a person compelled to make this choice **(to testify or not)** is entitled to have knowledge of the subject to which interrogation is deemed pertinent. That knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of a criminal offense. . . ."
>
> 354 U. S. 178.
>
> ". . . It is only those investigations that are conducted by use of compulsory process that give rise

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to a need to protect the rights of individuals against illegal encroachment. That protection can be readily achieved through procedures which prevent the separation of power from responsibility and which provide constitutional requisites of fairness for witnesses. . . ."

354 U. S. 178.

Witnesses must be informed with a sound degree of certainty:

"Certainty is all the more essential when vagueness might induce individuals to forego their rights of speech. . . ."

Winters v. New York, 333 U. S. 507.

The Supreme Court has reaffirmed the exactness and degree of certainty demanded in the scope of inquiry and its subject matter which must be afforded a witness.

Scull v. Virginia, May 4, 1959, 359 U. S. 344.

Defendants have in no way, manner, shape or form complied with law by informing plaintiffs of the scope and subject matter of inquiry or the matters of fact and law asserted.

Defendants have likewise failed to inform plaintiffs of what persons will conduct the hearing at issue and have thereby prevented plaintiffs from examining whether or not such persons are legally constituted as a body to conduct said hearing.

In failing to inform plaintiffs as to any specific, certain and explicit subject matter of inquiry, plaintiffs

are unable to prepare themselves for testimony, present rebuttal evidence of any character or to consult counsel thereon in an attempt to protect themselves and/or to be able to testify in the interests of justice.

(B) On Defendants' Failure and Refusal to Inform Plaintiffs of Their Accusers, Accusations Against Them and Subject Matter Thereof.

Although plaintiffs have demanded of defendants their right to see the accusations and affidavits filed against them defendants have expressly refused to disclose the names of accusers or other information in the accusations to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints. (L. p. 14, L. p. 150.)

This denial was by resolution and adopted as policy which is far more offensive than the rules and regulations adopted by defendants, yet they have not seen fit to make this denial a part of their rules and regulations. (L. p. 14, L. p. 55.)

Plaintiffs have a basic right to know in advance with what they are charged and the nature of the charges against them.

It has been held and long established that in denying a witness knowledge, information, and full disclosure of the charges or claims under consideration such fails to satisfy the requirement of a full hearing.

Morgan v. United States, 304 U. S. 1.

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"Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command."

304 U. S. 25.

". . . After an ex parte discussion with them and without according any reasonable opportunity to the respondents to contest therein. That is more than an irregularity in practice, it is a vital defect."

304 U. S. 26.

The *Morgan* case *supra*, has been strongly relied upon in asserting the principle that a full disclosure must be given to a witness before he could be afforded a fair and full hearing.

Greene v. McElroy, No. 180, October Term, 1958, and authorities cited therein.

Without such disclosure plaintiffs are without opportunity to prepare for the giving of testimony or obtain proper legal counsel and/or do justice in giving testimony.

(C) **On Defendants' Failure and Refusal to Afford Plaintiffs' Right to Confrontation and Cross-Examination of Their Accusers.**

Defendants have refused to make any disclosure of the names of accusers or other information in the accusations to plaintiffs and such will deprive plaintiffs

of their rights to confrontation and cross-examination of their accusers, traditional procedural safeguards.

However, should any witness appear before defendants and give testimony or produce evidence against them, plaintiffs are helpless and their rights abridged by virtue of Rule 3 (i) of the Rules and Regulations made and adopted by defendants which reads as follows:

> "3. (1) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by staff personnel."

This denial is unreasonable, arbitrary and capricious and further unlawful and unconstitutional. Confrontation and cross-examination under oath are protected by the American ideal of due process and despite the fact that plaintiffs are being condemned by faceless accusers some of whom are not even known to defendants, these rights have been denied plaintiffs.

This denial is clearly unwarranted and unjustified.

Our jurisprudence from time immemorial upheld the rights of an accused person at hearings, trials and in courts to be advised of the charges against him, faced and confronted by his accusers, and permitted to cross-examine his accusers.

In *Jones v. Securities Commission*, 298 U. S. 1, 27, 57 S. Ct. 654, 80 L. Ed. 1015, the Supreme Court said:

> ". . . 'A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commis-

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sion without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end.'

"The fear that some malefactor may go unwhipped of justice weighs as nothing against this just and strong condemnation of a practice so odious. . . .

"The philosophy that constitutional limitations and legal restraints upon official action may be brushed aside upon the plea that good, perchance, may follow, finds no countenance in the American system of government. **An investigation not based upon specified grounds is quite as objectionable as a search warrant not based upon specific statements of fact. Such an investigation, or such a search, is unlawful in its inception and cannot be made lawful by what it may bring, or by what it actually succeeds in bringing to light. . . .**" (Emphasis supplied).

In *Morgan, et al., v. United States, et al.*, 304 U. S. 1, 14, 20, 25, involving an administrative hearing, the Court said:

"The first question goes to the very foundation of the action of administrative agencies entrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field

of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand 'a fair and open hearing,'—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard.' . . .

* * * * * *

"The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. . . .

> " 'Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. . . '."

In the most recent decision on this subject, handed down by the Supreme Court on June 29, 1959, *Greene v. McElroy*, 360 U. S. 474, and speaking through Chief Justice Warren, the following language is found:

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"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and crossexamination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, *e. g.*, *Mattox v. United States*, 156 U. S. 237, 242-244; *Kirby v. United States*, 174 U. S. 47; *Motes v. United States*, 178 U. S. 458, 474; *In re Oliver*, 333 U. S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. *e. g.*, *Southern R. Co. v. Virginia*, 290 U. S. 190; *Ohio Bell Telephone Co. v. Commission*, 301 U. S. 292; *Morgan v. United States*, 304 U. S. 1, 19; *Carter v. Kubler*, 320 U. S. 243; *Reilly v. Pinkus*, 338 U. S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in

enacting regulatory legislation. *Joint Antifascist Committee v. McGrath*, 341 U. S. 168-169 (concurring opinion).

"Professor Wigmore, commenting on the importance of cross-examination, states in his treatise, 5 Wigmore on Evidence (3d ed. 1940) § 1367:

> " 'For two centuries past, the policy of the Anglo-American system of Evidence has been to regard the necessity of testing by cross-examination as a vital feature of the law. The belief that no safeguard for testing the value of human statements is comparable to that furnished by cross-examination, and the conviction that no statement (unless by special exception) should be used as testimony until it has been probed and sublimated by that test, has found increasing strength in lengthening experience.'

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, *e. g.*, *The Japanese Immigrant Case*, 189 U. S. 86, 101; *Dismuke v. United States*, 297 U. S. 167, 172; *Ex parte Endo*, 323 U. S. 283, 229-300; *American Power Co. v. Securities and Exchange Comm'n*, 329 U. S. 90, 107-108; *Hannegan v. Esquire*, 327 U. S. 146, 156; *Wong Yang, Sung v. McGrath*, 339 U. S. 33, 49. *Cf. Anniston Mfg. Co. v. Davis*, 301 U. S. 337; *United States v. Rumely*, 345 U. S. 41. **These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without**

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the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition." (Emphasis supplied.)

And Mr. Justice Douglas, concurring in *Peters v. Hobby*, says:

"It, therefore, becomes necessary for me to reach the constitutional issue.

"Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor faculties of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. **We deal here with the reputation of men and their right to work—things more precious than property itself.** We have here a system where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain. It is used not only to get rid of em-

ployees in the Government, but also employees who work for private firms having contracts with the Government. . . .

". . . An administrative agency—the creature of Congress—certainly cannot exercise powers that Congress itself is barred from asserting. See the opinion of Mr. Justice Black in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123, 144-146.

"Those who see the force of this position counter by saying that the Government's sources of information must be protected, if the campaign against subversives is to be successful. The answer is plain. If the sources of information need protection, they should be kept secret. But once they are used to destroy a man's reputation and deprive him of his 'liberty', they must be put to the test of due process of law. The use of faceless informers is wholly at war with that concept. When we relax our standards to accommodate the faceless informer, we violate our basic constitutional guarantees and ape the tactics of those whom we despise." (Emphasis supplied.)

Peters v. Hobby, 349 U. S. 351-352.

"It is noteworthy that procedural safeguards constitute the major portion of our Bill of Rights. And so, no one now doubts that in the criminal law a 'person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence. *In re Oliver*, 333 U. S. 257, 273, 68 S. Ct. 499, 507, 92 L. Ed. 682. 'The

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hearing, moreover, must be a real one, not a sham or a pretense.' *Palko v. State of Connecticut*, 302 U. S. 319, 327, 58 S. Ct. 149, 153, 82 L. Ed. 288. Nor is there doubt that notice and hearing are prerequisite to due process in civil proceedings, *e. g.*, *Coe v. Armour Fertilizer Works*, 237 U. S. 413, 35 S. Ct. 625, 59 L. Ed. 1027."

"This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society. Regard for this principle has guided Congress and the Executive. Congress has often entrusted, as it may, protection of interests which it has created to administrative agencies rather than to the courts. But rarely has it authorized such agencies to act without those essential safeguards for fair judgment which in the course of centuries have come to be associated with due process. See Switchmen's Union of North America v. National Mediation Board, 320 U. S. 297, 64 S. Ct. 95, 88 L. Ed. 61; Tutun v. United States, 270 U. S. 568, 576, 577, 46 S. Ct. 425, 426, 70 L. Ed. 738; Pennsylvania R. Co. v. United States Railroad Labor Board, 261 U. S. 72, 43 S. Ct. 278, 67 L. Ed. 536. And when Congress has given an administrative agency discretion to determine its own procedure, the agency has rarely chosen to dispose of the rights of individuals without a hearing, however informal.

"The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.

"An opportunity to be heard may not seem vital when an issue relates only to technical questions susceptible of demonstrable proof on which evidence is not likely to be overlooked and argument on the meaning and worth of conflicting and cloudy data not apt to be helpful. But in other situations an admonition of Mr. Justice Holmes becomes relevant. 'One has to remember that when one's interest is keenly excited evidence gathers from all sides around the magnetic point * * *.' It should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe. Compare Brown, The French Revolution in English History. 'The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.' *United States, ex rel. Knauff v. Shaughnessy*, 338 U. S. 537, 551, 70 S. Ct. 309, 317, 94 L. Ed. 317 (dissenting). Appearances in the dark are apt to look different in the light of day.

"Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of

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Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done."

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 167-174.

See also:

Shaughnessy v. United States, 345 U. S. 206.

In these deeds and acts defendants attempt to conduct an unwholesome and unfair hearing which fails to comport with the traditional ideas of fair procedure.

Certainly plaintiffs could not have benefit of counsel to bring to light all of the facts if confrontation and cross-examination of witnesses is denied.

The *Greene* case can be favorably compared with the case at bar as plaintiffs and Greene are:

1. Both citizens of these United States;
2. Both gainfully employed;
3. Both, because of their employment, brought into con-

test of an executive agency of the federal government whose aim is to control their activities.

4. Both under accusations accepted by a federal agency of the Executive Branch of our Government as creditable and valid;
5. Not assured or provided the traditional procedural Safeguards of apprisal, confrontation and cross-examination;
6. Because of the accepted accusations, subject to loss of their gainful employment;
7. Both are in the judgment of the particular federal executive agency "poor risks";
8. The questions propounded to Greene are in the same category as proposed interrogatories to the plaintiffs.

The difference in this case lies in the harsher penalties suffered by plaintiffs in that:

1. Plaintiffs are under compulsory and involuntary process to give forced testimony, whereas, Greene voluntarily sought the hearing;
2. Plaintiffs' jobs are **not** within the area of national security, whereas Greene's job was;
3. Plaintiffs are subject to criminal and civil prosecution in the federal courts as well as criminal prosecution in the Louisiana courts and would be at a financial loss exonerating themselves. 42 U. S. C. 1983, 18 U. S. C. 242, Louisiana R. S. 14:134, Louisiana R. S. 18:221.
4. Greene was allowed witnesses in their behalf, whereas these plaintiffs are not.

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The celebrated case of *Counselman v. Hitchcock*, 142 U. S. 547, abhors the type of practice attempted here wherein compulsory process is employed.

(D) On Defendants' Failure, Inability and Refusal to Allow Plaintiffs to Present Their Cases Fully Without Restriction.

Under the rules and regulations adopted by defendants, plaintiffs are thoroughly curtailed and wholly restricted in presenting their contentions.

Plaintiffs are without the right of compulsory process and are at the mercy of the arbitrary whim and caprice of defendants.

Under the Commission's statute the members of the Commission have the sole and final discretion and authority to subpoena witnesses.

42 U.S.C.A., 1975 (a);
42 U.S.C.A., 1975 (d).

In being denied the right of compulsory service to summon evidence and witnesses in their behalf plaintiffs cannot present a full and true disclosure of facts.

Should a witness appear in plaintiffs' behalf and be allowed to give testimony, plaintiffs have no right to direct examination of their own witness.

Rule 3 (i) of the Commission's Rule of Procedure prohibits such exercise of this right.

Defendants' denial in this instance clearly prevents plaintiffs' exercise of their right to have adequate representation and consultation of counsel.

(E) On Defendants' Authorities:

Defendants cite *Norwegian Nitrogen Products Company v. United States*, 288 U. S. 294, in support of their position.

Plaintiffs submit that this decision recognizes the traditional procedural safeguards:

> "For still another reason the ruling made by the Commission was not an arbitrary refusal to give the kind of hearing that in the circumstances of this particular inquiry was reasonable and fair." 288 U. S. 323.

In reaching this conclusion this Court found:

1. That petitioner was not subpoenaed to appear at the hearing at all and appeared entirely on its own volition;
2. That petitioner was afforded the opportunity to be apprised of all the facts except certain trade secrets for its refusal to reveal its trade secrets;
3. That petitioner was afforded the opportunity to, and did, cross-examine witnesses.
4. That petitioner was afforded, without restriction, the Commission's compulsory process power to present its case in the fullest extent possible.

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Defendants, in contrast to the above, did not and will not provide any of the procedural safeguards enumerated.

In re Groban, 352 U. S. 330, is clearly distinguishable. Groban had an Ohio statute under focus, it was an emergency for the exercise of that state's police power. This procedure was of long-established legislative policy of the people of Ohio. Although compulsory process was utilized, there were no complaints and accusations as are here present.

Plaintiffs are in contest with the federal executive. Policy of the United States through its people is clearly expressed and recognized as in *Greene* and the decisions prior thereto. The Administrative Procedure Act clearly establishes National policy as to the conduct of executive agencies when a citizen is in contest therewith despite the defendants' contention that they are exempted therefrom.

The district court clearly followed *Greene v. McElroy* as that Court held there has been no express and explicit authorization by the Congress or the President that the traditional procedural safeguards, apprisal, confrontation and cross-examination are denied plaintiffs or that there is any implication whatsoever in the Act itself that Congress intended such a denial in this field which is of doubtful constitutionality, to say the least.

In *Anonymous v. Baker*, 360 U. S. 287, this Honorable Court followed *Groban* in that a New York statute recognizing that state's policy of long standing was upheld. Therein the judiciary itself was conducting the investigation and the facts therein were less impressing

than in *Groban*. There were no accusations, charges or complaints before the Special Term as are here involved.

The *Greene* case was handed down a short time after *Anonymous*.

(F) **Summing-Up.**

Defendants have no authority whatsoever in their attempt to hold a hearing (at which plaintiffs are adverse parties) pursuant to policies, rules and regulations unfounded in law or equity and contrary to express law and our jurisprudence.

Defendants have denied plaintiffs' rights:

1. TO BE ADVISED OF THE SPECIFIC SCOPE OF MATTER AND QUESTION UNDER INQUIRY INSOFAR AS PLAINTIFFS ARE CONCERNED,
2. TO BE ADVISED OF THEIR ACCUSERS AND HAVE ACCESS TO THE ACCUSATIONS AND OTHER EVIDENCE AGAINST THEM,
3. TO BE CONFRONTED BY THEIR ACCUSERS AND CROSS-EXAMINE THEIR ACCUSERS,
4. TO PRESENT THEIR SIDE OF THE CASE EITHER BY DEFENSE OR OTHERWISE,
5. TO FULL REPRESENTATION AND CONSULTATION OF COUNSEL.

In these deeds and acts defendants attempt to hold a hearing and compel plaintiffs to attend and sub-

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ject themselves to rules and regulations which have been deplored by law and our jurisprudence.

II.

Defendants and the Commission Are Amenable and Subject to the Provisions of the Administrative Procedure Act.

From the largest federal agency to the smallest local body no proceeding can justify itself unless it is fair and just to the parties who appear either voluntarily or through compulsory process.

Investigation, hearing, adjudication, are mere labels that do not reach substantive issues, but arrive at conclusions which, in most cases, are more than mere facts. The findings are conclusions in fullest meaning, involving, as in the case at bar, conclusions of law that there have been violations of law on the part of plaintiffs.

To give men rights, but to deny to them the necessary procedure to exercise those rights is, in effect, to give them nothing.

In the federal field of executive agencies, the Administrative Procedure Act was passed by the Congress, at the insistence of the people, who were assured that it would cure the evils of administrative procedure existing therebefore. 5 U. S. C. 1001, *et seq.*

The very first section of the act creating the Commission on civil rights clearly establishes that this Commission is an agency established within the executive department of the government.

42 U.S.C.A. 1975 A

The very first section of the Administrative Procedure Act defines those executive agencies which come within its purview, the exceptions listed in this first section do not in any way include the Commission on civil rights.

5 U.S.C.A. 1011 reads as follows: "No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so expressly." There is nothing in the Commission Act which expressly exempts the Commission from the applicability of the Administrative Procedure Act. The Supreme Court has upheld the applicability of the Administrative Procedure Act to executive agencies unless the statutes creating such agencies expressly exempt them from the Administrative Procedure Act.

Mr. Justice Jackson, the organ of the Court in *United States v. Morton Salt Co.*, 338 U. S. 632.

> "The Administrative Procedure Act was framed against a background of rapid expansion of the administrative process as a check upon administrator whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices. It created safeguards even narrower than the constitutional ones, against arbitrary encroachment on private rights."

Courts must, regardless of their views of the wisdom or policy of this chapter (Administrative Procedure Act) construe the legislation to eliminate, insofar as its text permits, the practices it condemns. *Wong Yang Sung*

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v. McGrath, 339 U. S. 33; see also *Marcello v. Bonds,* 349 U. S. 302.

In vetoing the Walter Logan bill, an attempt by Congress to enact an administrative procedure bill preceding the Administrative Procedure Act, President Roosevelt said:

> "The objective of the bill is professedly the assurance of fairness in administrative proceedings. With that objective there will be universal agreement. The promotion of expeditious, orderly, and sensible procedure in the conduct of public affairs is a problem which commends itself not only to the Congress and the courts but to the executive departments and administrative agencies themselves."
>
> *United States Code Congressional Service, 79 Congress, Second Session, 1946, page 1198.*

The main features of the Walter Logan bill were embodied in our present Administrative Procedure Act. The Attorney General of the United States favorably recommended passage of the present Administrative Procedure Act saying:

> "The bill appears to offer a hopeful prospect of achieving reasonable uniformity and fairness in administrative procedures without at the same time interfering unduly with the efficient and economical expression of the government."
>
> *United States Code Congressional Service, 79 Congress, Second Session, 1946, page 1203.*

The procedural safeguards historically recognized in civil proceedings have been judicially recognized by a long line of jurisprudence culminating in the recent case of *Greene v. McElroy*, 180 October term, Supreme Court, (1958).

The Supreme Court has pronounced when the Congress, through solemn expression has sought to deny these traditional procedural safeguards to the public in civil proceedings, that such must be clearly and expressly declared, and as well, if such authority is present in the executive authority for the protection and security of our nation, clear and express mandate from the President himself must be present before these traditional procedural safeguards can be denied the public.

Kent v. Dulles, 357 U. S. 116;
Peters v. Hobby, 349 U. S. 331;
Ex Parte Endo, 323 U. S. 283;
Greene v. McElroy, supra.

Should this Court agree that the Administrative Procedure Act is binding upon the Commission on Civil Rights it is submitted that 5 U.S.C.A. 1004 entitled "Adjudications" and 5 U.S.C.A. 1006 entitled "Hearings" are primarily binding upon the Commission.

Order and Adjudication are defined in the Administrative Procedure Act (5 U.S.C.A. 1001 D) as:

> "Order means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or **declaratory in form) of any agency in any matter** other than rule making by including licens-

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ing. Adjudication means agency process for the formulation of an order." (Emphasis supplied.)

5 U.S.C.A. 1001 D.

The Commission on civil rights through its statutory duties necessarily adjudicates. It submits to the President and to the Congress comprehensive reports of its activities, **findings** and **recommendations.**

42 U.S.C.A. 1975 C.

In making a finding and formulating recommendations the Commission formulates an order, declaratory in form, which is final disposition of the matters which come before it and in so doing it adjudicates.

It "adjudicates" by its rulings upon the admissibility of evidence at its hearings, by its determinations of what is or is not the truth in matters before it, by its determinations on evidence as to whether or not such is defamatory, degrading or incriminating, by its rulings on whether or not requests of parties for witnesses will be granted, by its determination and sole judge of the pertinency of testimony and evidence adduced at its hearings, by judging conduct of counsel and punishing breaches thereof.

The Commission at its hearings and through its other activities weighs information and evidence and thereupon makes a determination of the facts. From the facts as ascertained and found by the Commission a further step is then and there made in that upon such facts recommendations are made. The statute itself, 42 USCA 1975 C, decides that such findings and recommendations will be contained in a **final** and comprehensive report, and

as such it is final disposition of the matters which the Commission has entertained.

Under the law of the State of Louisiana, plaintiffs are, as registrars, solely charged with the administration of that state's registration laws in their respective parishes. Louisiana Revised Statutes 18:1, *et seq.*

In view of the Commission's report that in Louisiana from the investigation and activities of the Commission "a substantial number of negroes are being denied the right to vote . . . through discriminatory application and administration of State registration laws", the Commission in adjudicating, thusly, passes judgment which is as condemning as any decision of any court in the land. Report of the United States Commission on Civil Rights. 1959, pp. 139-140.

Therefore, as the Commission does adjudicate, the hearings which it conducts are subject to the procedures set forth and the provisions of 5 UCSA 1006.

III.

The Act of Congress Creating the Commission on Civil Rights Is Not Appropriate Legislation.

Congress' power to legislate with regard to elections falls primarily within two distinct categories.

First, the affirmative power to regulate the time, place, and manner of holding Federal elections: Article 1, United States Constitution, Secs. 2, 4 and 8.[1] These

[1] U. S. v. Classic, 313 U. S. 299, 316 (1941); Ex Parte Siebold, 100 U. S. 371, 383 (1879); U. S. v. Mosely, 238 U. S. 383 (1915); Ex Parte Yarbrough, 110 U. S. 651, 658 (1884).

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provisions are the basis of legislation effecting individual, as well as, governmental action in all Federal elections and even in primary elections, selecting nominees for Federal office.[2] This embodies the right of choice, which is simply the right of a qualified voter to vote and have his vote counted for the candidate of his choice in a Federal election.[3] Under these constitutional provisions Congress may not legislate as to the qualifications of voters or even the manner in which they are, or may be, registered.[4] The sole area within the scope of these provisions is whether a voter, qualified under State law, and duly registered (if a prerequisite to vote) has been allowed to cast his ballot freely on election day and have his vote for a Federal office honestly counted. Classic, *supra*. The Commission, in its report and investigations[5] delves almost entirely into the question of voter qualification and registration rather than the areas permitted under the applicable provisions of Article I of the United States Constitution. In fact, the recommendations of the commission are solely directed to registration and qualification of prospective voters.[6] Its actions and duties cannot be said to be valid under the provisions of Article I, as interpreted by this Court.

The specific part of the Act of Congress, which authorizes the Commission to hold these hearings, does not limit the scope of the hearing only to deprivation of the right to vote or have that vote counted in a Federal election or a primary to choose the party nominee for a Federal election, but leaves the Commission the right to inves-

[2] U. S. v. Classic, supra.
[3] Newberry v. United States, 256 U. S. 232 (1921).
[4] The Federalist LIX, LI.
[5] Report U. S. Com. on Civil Rights (1959) pp. 19-133; L. pp. 171-187.
[6] Report of U. S. Commission on Civil Rights (1959) pp. 134-145.

tigate any election State, Parish or Municipal.[7] Even the Commission, in issuing its subpoenas to the registrars, did not limit the scope of its investigation to Federal elections.[8] This is even more apparent when one considers the questions submitted to the various registrars to be answered by them. These questions, when asking about the right to vote and have that vote counted, were not restricted to Federal elections or primaries nominating party candidates for Federal offices but, to the contrary, asked about all elections.[9]

Even though the Act of Congress authorizes the Commission to investigate all cases of voting deprivation, whether in a Federal election or State election, such legislation is not authorized by any of the provisions of Article I of the Constitution of the United States.

The second area in which Congress may legislate with regard to elections is granted specifically by the 14th and 15th amendments to the United States Constitution. This area, however, is limited to situations where the invasion of the right to vote is occasioned by governmental action.

> "The single question presented for our consideration is whether § 5507 can be upheld as a valid enactment, for, if not, the indictment must also fall, and the defendant was rightfully discharged. On its face the section purports to be an exercise of the power granted to Congress by the 15th Amendment, for it declares a punishment upon anyone

[7] Public Law 85-315, 85th Congress, Sec. 104 (a) 6.
[8] L. pp. 16 and 17.
[9] L. p. 178, questions 138-140.

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who, by means of bribery, prevents another to whom the right of suffrage is guaranteed by such amendment from exercising that right. But that amendment relates solely to action 'by the United States or by any state', and does not contemplate wrongful individual acts. It is in this respect similar to the following clauses in the 14th Amendment."

James v. Bowman, 190 U. S. 127 (1903);

See also:

Terry v. Adams, 345 U. S. 461, rehearing denied 345 U. S. 1003 (1953);

Civil Rights Cases, 109 U. S. 2 (1883).

While Congress may have the right to investigate in order to compile facts which may aid in its legislative duty, it does not have the power to investigate matters and conditions in an area in which Congress is forbidden to legislate: [10]

"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed coextensive with the power to legislate. Without the power to investigate—including, of course, the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.

[10] 1 Cooley, Constitutional Limitations 11 (8th Ed. 1927); Rottschaefer, American Constitutional Law § 63 (1939).

"(3, 4) **But the power to investigate, broad as it may be, is also subject to recognized limitations.** It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. **Nor does it extend to an area in which Congress is forbidden to legislate.** Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here." (Emphasis supplied).

Quinn v. U. S., 349 U. S. 155, 161.

Where Congress does not have the power or authority to investigate, *a fortiori*, it cannot delegate such power to the Commission.

Recently the United States District Court for the Middle District of Georgia decided the case of *U. S. v. Raines*, 172 F. Supp. 552. While the said case did not discuss the section of the Act creating the Civil Rights Commission, it did determine the point raised by petitioners with regard to the constitutionality of another section of the Civil Rights Act.

In discussing the Civil Rights Act of 1957, the Court in its opinion said (172 F. Supp. 557):

"This brings into focus the question which is now presented for determination by this Court. Under Section 1971 as passed in 1957, is the Attorney

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General permitted to institute proceedings for preventive relief, where the alleged wrongful deprivation is that of a private citizen, not a state officer, not acting under color of any state law, custom or usage?

". . . The question is, not what the Attorney General has done here, but what Congress has authorized him to do. As was clearly demonstrated in the case of *United States v. Reese, et al.*, 92 U. S. 214, **where a statute is enacted in general terms sufficiently broad to apply to wrongful acts, outside as well as within the constitutional jurisdiction of Congress such a statute cannot be limited by judicial construction so as to make it operate only on that which Congress might rightfully prohibit.** 'To limit this statute in the manner now asked would be to make a new law, not to enforce an old one.' Ibid. It is well to note that the Supreme Court was there considering one section of the Act of 1870, of which section 1971 (a) was a part.

"Thus, it is not for this Court to decide whether this particular fish is properly within the net, but whether the net is so large as to catch many fish not properly within it.

"It is clear beyond question, that the Fifteenth Amendment to the Constitution relates 'solely to action by the United States or by any State, and does not contemplate wrongful individual acts.' *James v. Bowman*, 190 U. S. 127. The statute which is here under consideration, as did the one in the above cited cases, 'on its face . . . purports

to be an exercise of the power granted to Congress by the Fifteenth Amendment.' The government of the United States is one of delegated, limited, and enumerated powers. Therefore, every valid act of Congress must find in the Constitution some warrant for its passage.' *U. S. v. Harris*, 106 U. S. 629. The power of Congress to legislate at all upon the subject of voting at State elections rests upon the Fifteenth Amendment. Prior to its enactment there was no constitutional guaranty against discrimination on account of race, color or previous condition of servitude. *U. S. v. Reese, et al.*, 92 U. S. 214.

"Thus, it will be seen that, if Section 1971 (c) is constitutional, it is because of the power given congress by the Fifteenth Amendment. As stated, that Amendment relates solely to action by the United States or by any State and does not contemplate wrongful individual acts. . . . Thus, for present purposes, it will be assumed that the Fifteenth Amendment authorizes Congress, by appropriate legislation, to prohibit and punish deprivation of voting privileges on account of race or color by any State or by the officers of any State while in the exercise of state given authority. **It does not, however, authorize Congress to prohibit or punish purely individual and private action depriving another of his right to vote on account of his race or color.**" (Emphasis supplied).

The Court then found that the Civil Rights Act of 1957 was directed at individual as well as State action.

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Pages 11-12 of the opinion read in part (172 F. Supp. 558):

"This brings us to the meat of the controversy here: What does Section 1971 (c) seek to do? Is it limited to state action, as previously defined, or is it sufficiently broad to encompass wrongful action by individuals?

"It will be noted at the outset that the section itself includes no limitation as to the persons subject to suit under it. It includes **any person** engaging in or about to engage in a certain type of conduct. By its own terms the section is applicable to any person engaging in the type of action described herein. . . . If any person other than one clothed with state authority can engage in such act or practice, then the section is broad enough to allow suit against him and is not limited to state action. **It will be particularly noted that the section makes no reference to color of law, a phase with which the Congress is very familiar, having used it in other sections of this, as well as other Civil Rights Acts. . . .**

"Now, what is the prescribed act or practice which brings this section into play? It is not any act or practice which would deprive another of his rights under the Fifteenth Amendment. If that were the language, there could be no doubt about its limitation to state action, since a private citizen acting individually cannot deprive another of his rights under the Fifteenth Amendment. . . .

"Here, however, Congress did not so limit the statute. The action prescribed therein is 'any act or

practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section'. . . ." (Emphasis supplied).

In declaring subsection (c) of Section 131 of Part IV of the Act unconstitutional the Court said (pp. 12-22) (172 F. Supp. 561-2):

"Subsection (c) creates a remedy against purely private, as distinguished from state, deprivation of voting rights on account of race or color. The fact that the instant case is a suit against state officials cannot alter the scope of the statute. This illustrates the danger of this type of legislation, which danger was recognized as early as the case of *United States v. Reese, et al.*, 92 U. S. 214. There the Court held: 'We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts, without as well as within the constitutional jurisdiction, can be limited by judicial construction, so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. ". . . When

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a person is enjoined from violating a statute, he is entitled to know what that statute prescribes, without awaiting the finality of an authoritative court opinion".'

"As stated in the Reese case, supra: 'It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the Courts to step inside and say who could be rightfully detained, and who should be set at large.'

"It is this Court's considered opinion that this statute would allow the Attorney General to seek an injunction against a private citizen for an individual act, divorced completely from state action. It is the province of the several states to protect the rights of one citizen against the wrongful practices of another person. *James v. Bowman*, 190 U. S. 127. Congress should not be allowed to extend the authority of the Federal Government into this field. . . .

"For the reasons set forth above, the Court concludes that Section 1971 (c) of Title 42 is beyond the jurisdiction of Congress and unconstitutional. It is not appropriate legislation within the meaning of Section 2 of the Fifteenth Amendment to the Constitution of the United States. . . ."

The Commission may argue that their right to investigate is limited to governmental action, however, the proof of the pudding is in the eating. It has, throughout its report, compiled facts, dealing with denial of the right

to vote, which are related to solely individual action and which are not restricted to Federal elections.[11]

The law is clear that under the separation of powers doctrine the legislative branch of government may not exercise a judicial function.

> "In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary Articles, the allotment of power to the executive, the legislative, and judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another.
>
> "It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forbearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made, and it is believed not always without success. . . ."
>
> "In looking to the Preamble and Resolution under which the committee acted, before which Mr. Kilbourn refused to testify, we are of opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because the power was in its nature clearly judicial.

[11] Report of the United States Commission on Civil Rights (1959) pp. 40, 55, 56, 57, 58, 64, 134.

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"The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. We do not, after what has been said, deem it necessary to discuss the proposition that if the investigation which that committee was directed to make, was one that was judicial in its character and which could only be properly and successfully made by a court of justice, and if it related to a matter in which relief or redress could be had only by a judicial proceeding, that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the government. We think it equally clear that the power asserted is judicial and that it is not legislative. . . ." *Kilbourn v. Thompson*, 103 U. S. 168, 191, 192 (1881).

As to the nature of the investigation sought to be carried on, the language used by Judge Wisdom in the dissent herein speaks for itself.

"The rub in this case comes from the Act itself. It comes from the incongruity of a legislative commission of inquiry investigating specific complaints against individuals accused of crimes. To my mind, the creation of such a commission is of question-

able legislative propriety, at best. It carries grave danger of legislative usurpation, at worst.

"The investigation of specific violations of the law is for grand juries, not legislative commissions. **With all deference to Congress, a commission, constituted to investigate a broad problem of national interest, has no business holding hearings that must inevitably develop into legislative trials of individuals. . . .**" (L. p. 264.) (Emphasis supplied.)

This investigatory power sought to be exercised by Congress is a bold usurpation of a judicial function and, as such, is unconstitutional.

To date, appellees have limited their argument to the question of the power of Congress to legislate on this matter. Conceding for the purpose of argument only that Congress has the power to legislate and the corollary power to investigate, does it have the power to delegate this purely legislative function to the executive branch of government?

The act creating the Commission makes it mandatory that the Commission report to Congress its findings and recommendations.[12] These recommendations are for new and additional legislation, which Congress, according to the Commission, needs to enact.[13]

This power to investigate the necessity and advisability of new legislation is purely and simply ancillary to the legislative power.

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[12] Pub. Law 85-315, Sec. 104 (b).
[13] L. pp. 134-145.

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"We are further of opinion that the provisions are not of doubtful meaning, but, as was held by this court in the cases we have reviewed are intended to be effectively exercised, and therefore to carry with them such auxiliary powers as are necessary and appropriate to that end. While the power to exact information in aid of the legislative function was not involved in those cases, the rule of interpretation applied there is applicable here. A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it. Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process—was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was treated as inhering in it. Thus there is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised." *McGrain v. Daugherty*, 273 U. S. 135, 175 (1927).

The intent of Congress that the Commission is merely filling a function which is theirs is clearly shown by the striking similarity between the rules of House Committees and those of the Commission.[14]

We submit that such attempt of Congress to delegate a purely legislative power to the executive branch of government clearly violates the separation of powers doctrine, so vital to the survival of this nation—even to this Honorable Supreme Court.

IN CONCLUSION.

Congress created the Civil Rights Commission as an executive branch of government.

There are three distinct branches of our Government:

1. Legislative—to make laws
2. Judicial—to interpret laws
3. Executive—to enforce laws

This Commission is not given any law to enforce.

Congress has created manifold executive agencies to enforce laws made by Congress and has given them the power to investigate if such laws are being carried out. Congress is not a law enforcement or a trial agency. Congress, wherever it has the constitutional authority to legislate, has investigatory power to effectuate legislation.

The Civil Rights Commission has made no showing of any constitutional authority in Congress to delegate

[14] Brief of petitioner, L. pp. 61-63.

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its own legislative investigative power to any executive or judicial branch of government; nor can any constitutional authority be shown.

Attention is specifically invited to the fact that while this Commission emphasizes that the rules of the Act creating it are in effect to so-called "Fair Play" rules of the House of Representatives, it also realizes the rules of the House were never adopted by the Senate.

This Commission is acting as an adjudicatory tribunal rather than as a bona fide investigating agency, but refuses to comply with the Administrative Procedure Act. In addition, the proposed hearing at Shreveport did not relate to material matter, since the Commission already had all the information on which to base its report and did make such a report to Congress during the pendency of this appeal.

This appeal is an endeavor to have this Court reverse the District Court and still hold a hearing, simply a fishing expedition with the hope of an exposure just for exposure's sake.

The defendants are without any authority from the Congress or the President to abridge and withhold the traditional procedural safeguards from plaintiffs.

Defendants in an unlawful, imperatorial and autogenous manner attempt to conduct a hearing and control the elicitation of evidence to their own autocratic ends and in so doing prevent plaintiffs from presenting anything in their behalf to affect or change their predetermined conclusion that wrongs and crimes (in the area of suffrage) have been committed by plaintiffs.

Plaintiffs charge and show that defendants are threatening, coercing and in a tyrannical manner bringing unlawful procedures to bear against them causing great injury, not only to them, but as well, to the qualified and franchised voters of this State. If this bold, but unlawful experiment were successful, the civil rights of citizens qualified to vote could be greatly prejudiced by having their vote nullified by persons who might not otherwise be qualified to register and vote, but through these illegal acts have been franchised.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that jurisdiction of the appeal should be noted and that the judgment of the District Court be affirmed.

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PROOF OF SERVICE.

This is to certify that I, Jack P. F. Gremillion, Attorney General, State of Louisiana and a member of the bar of the United States Supreme Court, did, this ..... day of January, 1960 serve copies of the above and foregoing brief on appellants by placing same in the United States Mail, air mail postage prepaid, addressed to the Solicitor General, Department of Justice, Washington 25, D. C.

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APPENDIX.

CONSTITUTION OF THE UNITED STATES

ARTICLE I

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in

December, unless they shall by Law appoint a different Day.

(Section 8, Paragraph 18)

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and

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cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

ARTICLE [XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE [XV]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

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Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE [XVII]

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

U. S. STATUTORY PROVISIONS

18 U. S. C. A. 242

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,

or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

42 U. S. C. A. 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

5 U. S. C. A. 1001 (a)

(a) "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the governments of the possessions, Territories, or the District of Columbia. Nothing in this chapter shall be construed to repeal delegations of authority as provided by law. Except as to the requirements of section 1002 of this title, there shall be excluded from the operation of this chapter (1) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them, (2) courts martial and military commissions, (3) military or

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naval authority exercised in the field in time of war or in occupied territory, or (4) functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947, and the functions conferred by sections 301-303, 304, 305, 306-309, 310, 311-318, 1881-1884 and 1891-1902 of Appendix to Title 50, and sections 1738 and 1744 of Title 12; sections 1611-1614, 1615-1646, and 981-985 of Appendix to Title 50, and sections 101-125 of Title 41; and sections 1738, 1739, and 1743 of Title 12, and sections 1821-1833 of Appendix to Title 50.

5 U. S. C. A. 1004

§ **1004. Adjudications**

In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 1010 of this title; (3) proceedings in which decisions rest solely on inspections, tests, or elections; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives.

Notice of hearing and issues

(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction

under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

Procedure

(b) The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 1006 and 1007 of this title.

Authority and functions of officers and employees

(c) The same officers who preside at the reception of evidence pursuant to section 1006 of this title shall make the recommended decision or initial decision required by section 1007 of this title except where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the

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performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 1007 of this title except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

Declaratory orders

(d) The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty. June 11, 1946, c. 324 § 5, 60 Stat. 239.

5 U. S. C. A. 1006

§ 1006. Hearings; presiding officers; powers and duties; burden of proof; evidence; record as basis for decision

In hearings which section 1003 or 1004 of this title requires to be conducted pursuant to this section—

(a) There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this chapter; but nothing in this chapter shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before

boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 1007 of this title shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case.

(b) Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 1007 of this title, and (9) take any other action authorized by agency rule consistent with this chapter.

(c) Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, pro-

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bative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 1007 of this title and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary. June 11, 1946, c. 324, § 7, 60 Stat. 241.

LOUISIANA STATUTORY PROVISIONS

R. S. 14:134

§ 134. Malfeasance in office

Malfeasance in office is committed when any public officer or public employee shall:

(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

(2) Intentionally perform any such duty in an unlawful manner; or

(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

R. S. 18:221

§ 221. Violations generally; successive offenses

No person shall violate any provision of this Chapter for which no penalty is specifically provided, or wilfully fail or refuse to perform an act or duty required under this Chapter.

Whoever violates this Section shall be fined not less than one hundred dollars nor more than five hundred dollars, and imprisoned for not less than ninety days nor more than six months. The penalty shall be doubled for the second or any succeeding offense.

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 549

JOHN A. HANNAH, ET AL., APPELLANTS

v.

MARGARET M. LARCHE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA

No. 550

JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE APPELLANTS IN NO. 549 AND THE PETITIONERS IN NO. 550

I

THE COMMISSION IS NOT AN ADJUDICATORY BODY AND DOES NOT PERFORM JUDICIAL FUNCTIONS

The brief for the appellees in No. 549—*Hannah* v. *Larche*—repeatedly characterizes the Civil Rights

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Commission's functions as judicial or adjudicatory (Br. pp. 6, 7, 8, 29, 32–34, 44, 46, 49). Their reliance on decisions involving the exercise of judicial and quasi-judicial power demonstrates that this point is central to appellees' case (Br. pp. 10, 12–13, 14–24, 32, 44–45).

It is submitted that characterization of the Commission as an adjudicatory body or as one possessing judicial powers is wholly erroneous. As amply demonstrated in our main brief (pp. 32–37), the Commission has no powers of adjudication. Beyond that, the function of the Commission is not to determine whether in any given case a particular official or individual has committed any crime or performed an unlawful act. The Commission is concerned only with determining and reporting to the President and the Congress facts indicating whether corrective measures are necessary in order to protect and secure basic constitutional rights. As Representative Keating, a sponsor of the bill which became the Civil Rights Act of 1957,[1] stated during the debates (103 Cong. Rec. 8497):

> The Commission is empowered only to study and investigate. It will not have power to prosecute, nor, of course, any power to legislate. The purpose of the Commission is primarily to determine whether there is need for further legislation in the field of civil rights.[2]

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[1] See p. 24 of our principal brief, note 15.

[2] See also: 103 Cong. Rec. 8859, Rep. Keating; 13897, Senator Johnson; 11989, 11990, 13457, Senator Kefauver; 12456, Senator Morse; 102 Cong. Rec. 12918, Rep. Keating; H. Rep. No. 291, 85th Cong., 1st Sess., pp. 5, 8; Hearings before Sub-

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If, as we believe to be entirely clear from the provisions and legislative history of the Act, the Commission's authority and functions are limited to making investigations and studies as a basis for corrective legislative or executive action, and it is not empowered to hold trials or determine rights or liabilities, it is of no consequence that an investigation conducted by the Commission might possibly reveal facts indicating that particular individuals may have committed illegal or reprehensible acts. A general fact-finding inquiry can proceed only through ascertainment of a mass of particular facts. Just as a design may be discerned only through assembling all the mosaics of which it is composed, so, too, an investigating body can intelligently ascertain and evaluate the total situation by inquiry into particular facets. This has been the practice of most of the great legislative inquiries in our history—inquiries which have led to important Congressional actions.

In *McGrain* v. *Daugherty,* 273 U.S. 135, Mr. Justice Van Devanter's opinion for the Court comprehensively examines the history and scope of legislative investigative power. In that case, also, it was contended that an otherwise proper legislative investigation is transformed into an improper judicial inquiry where the facts investigated may reveal evidence of criminality or wrongdoing. This contention, after full

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committee on Constitutional Rights, Senate Judiciary Committee, 85th Cong., 1st Sess., pp. 13–14, but cf. *id.* at p. 204 (testimony of Attorney General Brownell).

consideration, was rejected by a unanimous Court (pp. 179–180):

> We think the resolution and proceedings give no warrant for thinking the Senate was attempting or intending to try the Attorney General at its bar or before its committee for any crime or wrongdoing. Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part.

There is no support whatsoever for any inference that Congress intended, or that the Civil Rights Commission is engaged in, "exposure for the sake of exposure." Cf. *Watkins* v. *United States,* 354 U.S. 178, 187, 200; *Barenblatt* v. *United States,* 360 U.S. 109, 166 (opinion of Brennan, J., dissenting). If there were any possible doubt on this score, it is completely dispelled by the record of the Commission's activities.[3] In the context of the Commission's investigations of alleged deprivations of voting rights, such "exposure" as is involved would appear to affect the complainants more acutely than the persons against whom the complaints are directed. Cf. Record in No. 549, pp. 148–49. The primary focus of Section 104(a)(1) is upon

[3] We have lodged with the Clerk copies of the Report of the Commission on Civil Rights, transmitted to the President and Congress on September 9, 1959. It may be noted that Chapter V of Part Two, dealing with the Alabama voting hearing, concludes with "Findings of Fact" and "Conclusions of Law" made by the Commission. It clearly appears, however, that these are in the nature of broad legislative findings, which do not refer to any particular officials or individuals by name, and do not constitute any adjudication or determination regarding specific alleged deprivations of voting rights.

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the citizens whose constitutional voting rights are allegedly being violated, rather than upon the officials or persons who may be responsible for such violations. As the background and legislative history of the Act as a whole abundantly demonstrate, the principal concern of Congress was to secure in full measure the constitutional right to vote of all citizens, regardless of race or color. Section 104(a)(1) affords citizens complaining of any such deprivations with the opportunity to make known their grievances to a special agency established for the purpose of receiving and investigating these complaints and reporting its findings and recommendations to Congress and the President.

To be sure, Section 104(a)(1) requires that the allegations to be investigated shall be "in writing under oath or affirmation." This language, viewed in context and in the light of the legislative history, furnishes no basis for an inference that the Commission would in this regard be acting in other than an investigative capacity. The function of the Commission under Section 104(a)(1) is in one aspect a particularization of, and comprehended within, the general investigative authority provided by Congress in subparagraphs (2) and (3) of Section 104(a). In another aspect, subparagraph (1) is significant in making explicit the purpose of Congress that *voting* allegations, as distinguished from other rights protected by the equal protection of the laws under the Constitution, should be fully investigated by the Commission. The requirement that the voting allegations be in

writing and under oath or affirmation was added by Congress, not to alter the basic investigative function of the Commission, but as a "protective provision" to allay the fear expressed by some legislators that the Commission might otherwise be required to investigate flimsy or unsubstantiated allegations, oral and unsworn. Representative Keating pointed out (103 Cong. Rec. 8412):

> As a matter of fact, this bill is in essence, you might say, a watered-down version of the civil rights bill which this House passed in the last Congress. The only respects in which it is changed from that are that additional protective provisions have been written into it, such as, for instance, the provision that the same rules will apply to the hearings of the Commission on Civil Rights as apply to our own congressional committees; the fact that the subpena power to bring people before this Commission to testify is limited to the judicial circuit in which the witness is found; and that the complaints filed with the Commission must be sworn complaints in order to set in motion the procedure for hearing by the Commission.

And he later reemphasized (103 Cong. Rec. 8497):

> The Commission is to investigate allegations that persons are being deprived of the right to vote by reason of race, color, religion or national origin.
>
> To avoid the Commission's instituting unwarranted investigations, all allegations must be in writing, under oath or affirmation, and must set forth the facts upon which they are based.

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II

THE ADMINISTRATIVE PROCEDURE ACT IS INAPPLICABLE

Appellees further claim that Sections 5 and 7 of the Administrative Procedure Act (5 U.S.C. 1004, 1006) are binding on the Commission. This contention was rejected by the District Court (177 F. Supp. 816, 819 n. 3):

> The A.P.A. prescribes in section 7 (5 U.S.C. 1006), specific hearing procedures with respect to two processes; in section 4 (5 U.S.C. 1003) with respect to "rule making", and in section 5 (5 U.S.C. 1004) with respect to "adjudications." The Act contains no hearing requirements except where rule making or adjudications are involved. The Civil Rights Commission is performing neither function here.

This conclusion was clearly correct.[4]

Appellees' claim is based on the assumption that the findings and recommendations of the Commission constitute an order within the meaning of the Administrative Procedure Act and that accordingly the Commission necessarily "adjudicates."

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[4] In addition, Section 4 (5 U.S.C. 1003) specifically excepts the procedural rule-making function from the notice and hearing provisions. See *Gibson Wine Co.* v. *Snyder*, 194 F. 2d 329 (C.A.D.C.); Administrative Procedure Act, Legislative History, 79th Cong., 1944–46, pp. 200, 315 (hereinafter referred to as Legislative History). Likewise, Section 6 (5 U.S.C. 1005) has no relevance here because this section on its face applies only to ancillary functions of those governmental bodies whose functions come within the principal provisions of the Act. See *Torras* v. *Stradley*, 103 F. Supp. 737 (N.D. Ga.).

As shown in our principal brief (pp. 34–35) and under point I, *supra,* the Commission is a purely investigative body. Its function is not embraced by Section 5 of the Administrative Procedure Act which, as Representative Walter explained (Legislative History, p. 359):

> relates to the judicial function of administrative agencies where they decide specific cases respecting compliance with existing law or redress under existing law.

Beyond that, the Act applies only to a body which is an "agency" as defined by the Act. Section 2 (5 U.S.C. 1001) defines "agency" as "authority * * * of the Government of the United States." The term "authority" was defined by the Senate Judiciary Committee which analyzed and made suggestions as to each provision of the Act as follows (Legislative History, p. 13):

> It is necessary to define agency as "authority" rather than by name or form, because of the present system of including one agency within another or of authorizing internal boards or "divisions" to have final authority. "Authority" means any officer or board, whether within another agency or not, which by law has authority to take final and binding action with or without appeal to some superior administrative authority. * * *

In the debates in the House, Representative Walter, in detailing the provisions of the bill, stated (Legislative History, p. 354):

> The definition of agency in section 2(a) of the bill is perfectly simple and consists of two

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> elements: First, there are excluded legislative, judicial, and territorial authorities. Secondly, there is included any other authority regardless of its form or organization. In short, whoever has the authority to act with respect to the matters later defined is an agency.[5]

The Civil Rights Commission, of course, can take no final or binding action with respect to "the matters later defined", *i.e.*, rule-making and adjudication. As indicated above, it neither makes rules (other than those relating to its procedures) nor adjudicates.

In short, it is clear that the Commission on Civil Rights is not an "agency" within the terms of the Administrative Procedure Act, and the provisions of Sections 5 and 7 have no applicability to it.

Finally, as developed at length in our principal brief (pp. 21–32), the Civil Rights Act of 1957 prescribed the procedures to be followed by the Commission. As the legislative history of the Administrative Procedure Act shows and the decisions of this Court hold, where such special procedures are embodied in the substantive statute, such procedures must be followed rather than those set forth in the Administrative Procedure Act. *Marcello* v. *Bonds*, 349 U.S. 302; Legislative History, p. 307.

CONCLUSION

For the reasons stated in our main brief, as supplemented above, it is respectfully submitted that the judgment of the District Court should be reversed.

J. LEE RANKIN,
Solicitor General.

JANUARY, 1960

[5] See also, Legislative History, pp. 196, 253.

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APPENDIX

In view of the importance of the legislative history of the Civil Rights Act of 1957 relating to the procedures to be followed by the Commission, we are reprinting in this Appendix, for the convenience of the Court, the pertinent excerpts from the hearings, committee reports, and debates:

Hearings

Before the House Rules Committee, 85th Cong., 1st Sess., p. 176, Testimony of Rep. Frazier:

> The authors of this proposal contemplate that it will yield thousands of complaints and even more thousands of subpenas will be issued. The various allegations will, in the first instance, be incontrovertible and wholly ex parte and the principal concerned, against whom the charges are made, when summoned as a witness is given no opportunity to cross-examine. True, the person summoned as a witness may have counsel (sec. 102), but only for the purpose of advising him of his constitutional rights.

Before the Subcommittee on Constitutional Rights, Senate Judiciary Committee, 85th Cong., 1st Sess., pp. 14–15, Testimony of Attorney General Brownell:

> Now there is one other addition to S. 83 that I would like to make special reference to and that is the provision for rules of procedure contained in section 102 on pages 2 to 10 of S. 83. These rules of procedure are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable.

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We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission.

Favoring as I do the imposition of proper rules of procedures upon all governmental committees and commisions which conduct public hearings in order adequately to protect the individuals called before them, I am reluctant to take a stand opposing the imposition of the rules here involved.

Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules which may have to be tested out under the courts and this is only a 2-year Commission and you might have to spend those 2 years studying the rules instead of getting at the facts.

Another reason why I think perhaps the substance of these rules should be eliminated from this particular bill is that the caliber of the men whom the President would appoint to the Commission would be such that they could be counted on to give the fairest opportunity to witnesses and protect all of their legitimate rights.

So for these reasons I would suggest the deletion of those rules from the bill.

Before Subcommittee No. 5, House Judiciary Committee, 85th Cong., 1st Sess., p. 593, Colloquy between Attorney General Brownell and Representative Keating:

Mr. Keating [referring to the procedures required by H.R. 627] * * * They are considerably more restrictive than the rules * * * for conduct of regular congressional committees. If this committee should decide to include a provision for the conduct of hearings held by the Commission which was in general similar to

those set up in the rules of the House for the conduct of congressional committees, would you see any objection [to] that?

Mr. Brownell. I am confident that the caliber of the Commission would be such that you could count on them to give the fairest opportunity to witnesses, to be sure that their legitimate rights are protected. Neverheless [sic], if it is demed [sic] advisable by the Congress to set up a special set of rules for that purpose, I think it is extremely important that everyone join in seeing to it that proper rules of procedure are followed by the Commission. I would have no objection.

Committee Reports

H. Rep. 291, 85th Cong., 1st Sess., p. 6 (Majority Report):

> Whenever the Commission finds that a person may be defamed, degraded, or incriminated by reason of testimony or evidence presented at a hearing, it must receive such evidence or testimony in executive session and afford such person an opportunity to appear as a voluntary witness. If requests are made of the Commission to subpena additional witnesses, it is within the authority of the Commission to consider and dispose of such requests. Evidence of testimony acquired in executive session can only be released or used in public sessions with the consent of the Commission. * * *

H. Rep. 291, 85th Cong., 1st Sess., p. 52 (Minority Report):

> * * * The rules provided in the bill are inadequate for more than one reason.
>
> First, the House, itself, in the 84th Congress saw fit to adopt a set of rules that are more detailed and stricter than those contained in the bill; better protection of the rights of all were provided for; more orderly procedure was re-

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quired of the Commission. The membership of the House wisely imposed its own judgment over that of the committee. It should do so again on H.R. 6127.

Second, the wisdom of the House is manifest, and the inadequacy of the rules in this bill is clear. While those rules are proper for a congressional committee they can't be for a commission in the executive branch of the Government * * *.

Statements in the Debates by the Proponents of the Civil Rights Act of 1957

103 Cong. Rec. 8412, Rep. Keating:

As a matter of fact, this bill is in essence, you might say, a watered-down version of the civil rights bill which this House passed in the last Congress. The only respects in which it is changed from that are that additional protective provisions have been written into it, such as, for instance, the provision that the same rules will apply to the hearings of the Commission on Civil Rights as apply to our own congressional committees * * *.

103 Cong. Rec. 8491, Rep. Celler:

The rules of procedure of the Commission are the same as those which govern the committees of the House. For example, the chairman is required to make an opening statement as to the subject of the hearing. Witnesses are furnished with a copy of the Commission's rules and may be accompanied by counsel. The chairman is authorized to punish breaches of order by censure and exclusion. Protection is furnished to witnesses when it appears that a person may be the subject of derogatory information by requiring such evidence to be received in executive session, and affording the person affected the right to appear and testify, and further to submit a request for subpena of additional witnesses.

103 Cong. Rec. 8497, Rep. Keating:

Investigations by the Commission will be bound by rules of procedure modeled after those applicable to congressional committees. A copy of these rules must be made available to every witness who appears before the Commission.

Witnesses before the Commission have the right to counsel, and the Chairman has the power to punish breaches of order and decorum on the part of counsel by censure and exclusion from the hearings.

If it should find that evidence or testimony about to be adduced at any hearing might defame or incriminate any person, the Commission must receive it in executive session and must afford the person involved an opportunity to appear voluntarily as a witness. In addition, the person involved may, through the Commission, subpena additional witnesses on his own behalf.

Brief and pertinent sworn statements in writing may be submitted by witnesses and included in the record at the discretion of the Commission.

For the further protection of persons who may be affected by investigations conducted by the Commission, we have inserted another provision, which is not found in the rules of the House pertaining to Congressional hearings. The bill makes the unauthorized release or use of evidence or testimony taken in executive session punishable by a fine of $1,000 or imprisonment for not more than 1 year.

103 Cong. Rec. 8865, Rep. Rogers:

There was a great deal of testimony by Members who appeared before the subcommittee who stated that irresponsible individuals would be making wild charges. If they came before this Commission and it was an open meeting

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and they made accusations against individuals which were untrue and unfounded, or that may tend to injure the reputation of certain people, we then authorized the committee to have an executive session and by having an executive session they could evaluate as to the responsibility of this particular individual and the testimony that he might give. So, in order to make sure that the rights of the individuals would be protected, we provide that the testimony shall not be released unless the committee does so itself.

103 Cong. Rec. 12457, Sen. Morse:

The rules of procedure specified in section 102 are excellent. They incorporate many of the reforms which I have urged for many years upon the Congress. They provide for formal hearings, the right to counsel, protection of persons adversely affected by testimony, protection against premature release of executive testimony. They are not perfect. In all candor, I must say that I would wish that the Senate would adopt more of the same provisions for all of its committee investigations. Especially noteworthy is the following provision:

"(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses."

Statements in the Debates by the Opponents of the Civil Rights Act of 1957

103 Cong. Rec. 8673, Rep. Kilday:

The bill provides that witnesses may be accompanied by counsel, for what purpose? "For

the purpose of advising them concerning their constitutional rights." That is all. Even though the Commission or its own counsel develops only a portion of a transaction, and that adverse to the witness, his lawyer cannot ask a single question to develop the remainder of the transaction or the portion favorable to him.

103 Cong. Rec. 8680, Rep. Grant:

> The members of the committee, in their working over of this bill, definitely improved it in that a new section requiring the Commission in its hearings to observe the same rules of procedure which govern Congressional committees was added and the bill was amended to require complaints filed before the Commission to be in writing, under oath, and specific in content. * * *

103 Cong. Rec. 8698, Rep. Forrester:

> Now, you want to send out somebody to investigate. You know, I will tell you something that would be revolutionary, but, by the grace of God, I want to do it, and I want to help you do it, and that is I want to see Congress quit abdicating its responsibility. If you think that these kinds of charges exist, I want to see you have a congressional committee. I want to see you make the investigation. Let the gentleman from Georgia, TIC FORRESTER, challenge you. I am challenging you. Get rid of this legislation. Come on next year with an investigation. Put us under television; put every one of them under oath; put all my people under oath, but, in the name of God, let the good people of the United States see it and let them hear it. Let them look at those witnesses, their demeanor on the stand, their opportunity for knowing or not knowing what they are saying about it. And I make you this proposition. I do not care who you select to question those

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witnesses. You know, I would be willing if you would just let a little fellow like me just defend the other side of it, just cross-examine them some, just make them come on and let their milk down, just get the cold truth. I am your Huckleberry. I am ready whenever you want to go. Yes; I am willing to throw this case into the hands of the American people, and, just as sure as you live, it is going to the American people. You are not going to escape your responsibility. Do not kid yourself.

103 Cong. Rec. 8847, Colloquy between Reps. Forrester and Boyle:

Mr. Forrester. * * * Oh, how I would like to meet you over there, I would like to meet the NAACP, and all of the rest of those boys and put them under oath. The kind of commission you have here is silly. Not a single witness will be under oath, did you know that? They can lie with impugnity. You are inviting lies, you are inviting perjury, you are inviting false swearing. It is a sad commentary upon the Congress of the United States.

Mr. Boyle. Mr. Chairman, will the gentleman yield?

Mr. Forrester. I yield to the gentleman from Illinois.

Mr. Boyle. Is it a fact I served with the gentleman in the 84th Congress in connection with this very bill?

Mr. Forrester. The truth of the matter is that the gentleman and myself are in harmony on most everything except this and I hope I can get him in harmony on this one.

Mr. Boyle. I want to say for the benefit of the record that the gentleman in the well of the House is a very fine lawyer. I should like to make the further observation at no time during all of the hearings did he come forward with a suggestion that maybe we ought to attach to

the procedure as it refers to this committee [sic], the oath and the cross-examination features.

103 Cong. Rec. 11504, Sen. Talmadge:

No provision is made for any period of advance notice of Commission hearings.

No provision is made for any public announcement of Commission meetings or hearings.

No provision is made for notification of persons against whom charges are to be made.

No provision is made for persons adversely affected by testimony taken by the Commission to be present when they are accused or later to confront and cross-examine their accusers.

No provision is made for accused persons to have access to testimony concerning themselves, whether adverse or favorable, unless it is officially released.

No provision is made for accused persons to offer rebuttal or in any wise to set the Commission records straight.

103 Cong. Rec. 13726, Sen. Talmadge:

Why must we be so lax in the Congress as to fail to require for this Commission even the ordinary safeguards, rules, and procedures necessary to protect the people?

Why cannot we require in the pending bill that there be in the conduct of the investigations and hearings of the Commission all the protective measures which we have come to demand and expect as a matter of right in this Republic?

Why cannot we guarantee the right of witness to adequate and reasonable notice?

Why cannot we give a person who is accused of wrongdoing by a witness before the Commission the right to cross-examine his accuser?

Why cannot Congress require that in the conduct of the Commission the hearings must be public—open to the people and to the press—

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and that there be a full public disclosure of all testimony and proceedings of the Commission?

103 Cong. Rec. 13835, Sen. Stennis:

> Defamatory testimony tending to defame, degrade, or incriminate any person cannot be heard by the person slandered, since the testimony must be taken in executive session. There is no requirement in the proposed statute that the person injured by defamatory testimony shall have an opportunity to examine the nature of the adverse testimony. He has no right of confrontation nor cross-examination, and his request to subpena witnesses on his behalf falls within the arbitrary discretion of the Commission. There is no right to subpena witnesses.

103 Cong. Rec. 13836, Sen. Stennis:

> * * * The discretion of the Commission to determine its jurisdiction, to write its rules of procedure, choose its time and place of hearings, to determine the extent of examination, to conceal forever most relevant portions of testimony developed, and to deprive the witness of confrontation, cross-examination, and even access to his own testimony, is completely arbitrary and untrammelled, subject only to the limitations the courts have imposed on procedures designed to protect our Government against subversives.

U.S. GOVERNMENT PRINTING OFFICE: 1960

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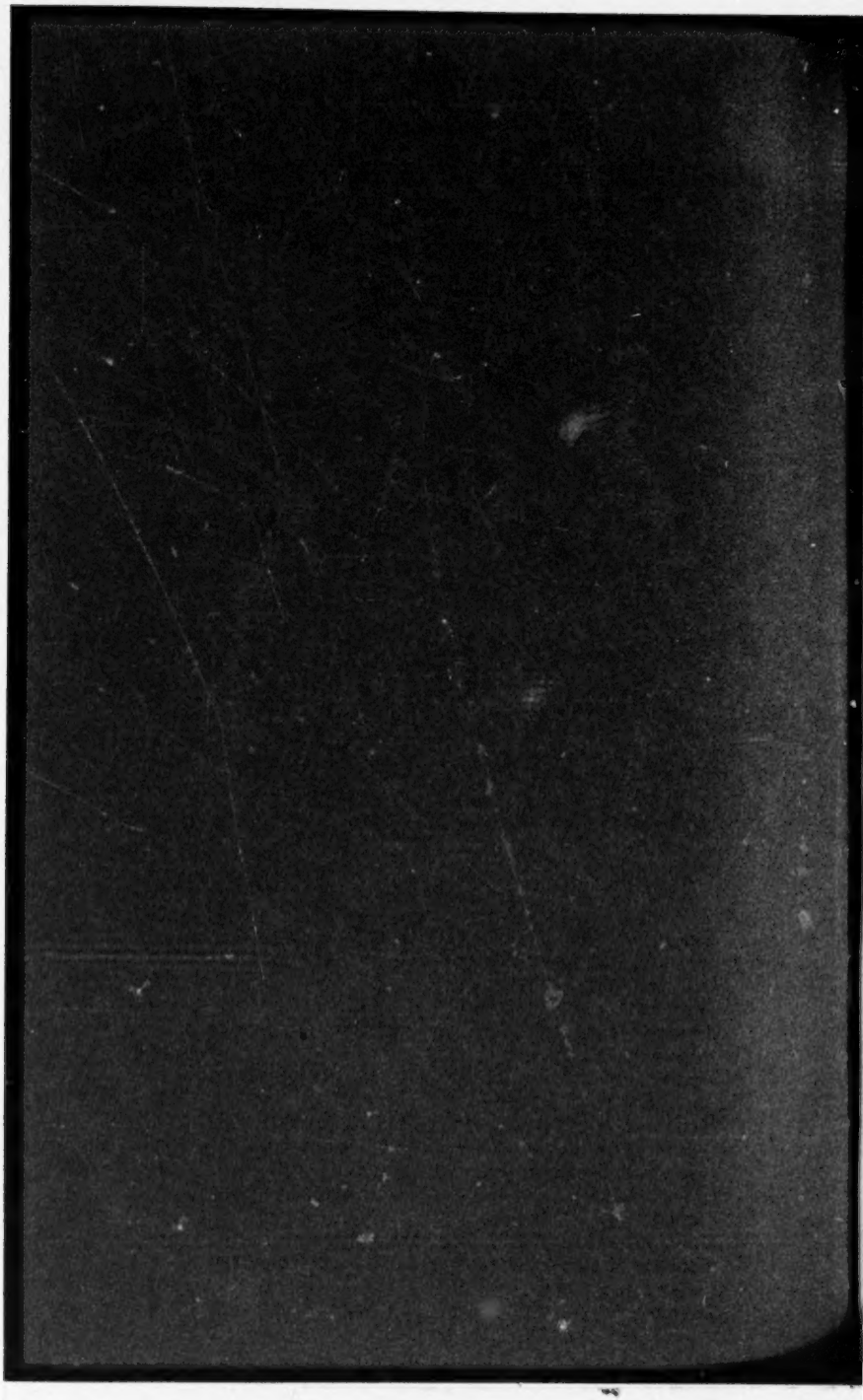

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 550

JOHN A. HANNAH, ET AL., PETITIONERS,

vs.

J. A. H. SLAWSON, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 7480

J. A. H. Slawson et als.,

vs.

John A. Hannah, et als.

Complaint—Filed July, 10, 1959

I

Jurisdiction

(a) The jurisdiction of this Court is invoked under Title 28, U. S. Code, 1331, this being a civil action at law and in equity arising under the Constitution and laws of the United States, wherein the matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars exclusive of interest and costs.

(b) The jurisdiction of this Honorable Court is further invoked under Title 42, U. S. Code, Section 1985, this being an action authorized to be brought by any citizen of the United States or other person within the jurisdiction thereof, to redress the deprivation of civil rights, privileges, or immunities granted by the Constitution and laws of the United States and/or a denial of equal rights under the Constitution and laws of the Unite States which have been, are now, and threaten to continue to be accomplished by a conspiracy in violation of the Constitution of the United States, and particularly Amendments I, IV, V and VI, thereof.

II

Injunctive Relief

(a) The jurisdiction of this Court is also invoked under Rule 65, Federal Rules of Procedure and the above cited provisions of U. S. Code, this being an action for injunctive

relief, both temporary and permanent to enjoin and restrain persons, acting under color of statutes, ordinances, [fol. 2] regulations, customs or usages of the United States from subjecting or causing to be subjected, citizens of the United States to the deprivation of the rights, privileges or immunities secured by the Constitution or laws of the United States.

III

Facts

1. Complainants allege that J. A. H. Slawson is an adult citizen of the Parish of DeSoto; that Edward C. Hopgood is an adult citizen of the Parish of East Feliciana, that Ray McElveen, Diaz McElveen, Paul Farmer and Eugene Farmer are all citizens of the Parish of Washington; that all of these parties who are the complainants herein are citizens of the State of Louisiana and the United States.

2. Plaintiffs allege that John A. Hannah is a resident of East Lansing, Michigan, that Robert G. Storey is a resident of Dallas, Texas, that John S. Battle is a resident of Charlottesville, Virginia, that Rev. Theodore S. Hesburgh is a resident of South Bend, Indiana, that Doyle E. Carlton is a resident of Tampa, Florida, and that George M. Johnson is a resident of the State of California. That each of these defendants is a member of and together constitute the "Commission on Civil Rights" purportedly created by Public Law 85-315, 85th Congress, 71 Stat. 634, duly qualified and acting. That each of these parties is sued individually and in his official capacity as a member of the "Commission on Civil Rights".

3. Plaintiffs allege that they bring this suit in their own behalf and in behalf of all other persons who have been subpoenaed to appear and testify before the so called "Commission on Civil Rights" at its hearing scheduled for July 13, 1959, in Shreveport, Louisiana, or at any other hearing scheduled to be conducted under the resolutions, rules and regulations adopted by said "Commission on Civil Rights"; that they are members of a class of persons who are unlawfully discriminated against in the exercise of [fol. 3] their civil rights and who threaten to be deprived of most of the basic rights of citizens of the United States guaranteed by the first ten amendments, the Bill of Rights

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of the U. S. Constitution, all by the action of the aforesaid "Commission on Civil Rights"; that members of the class are so numerous as to make it impracticable to bring them all before this Court; that they, as members of the class, will adequately and fairly represent all members of the class; that the character of the rights sought to be enforced and protected for the class is several and that there is a common question of law and fact affecting the several rights of all of the class and a common relief is sought, and that they bring this action as a class action pursuant to Rule 23 (a)(3), Federal Rules of Civil Procedure.

4. That between the approximate dates of June 29, 1959, and July 9, 1959, your complainants were each served by a United States Marshal or Deputy United States Marshal with what purports to be subpoenaes and restraints, commanding your complainants each to appear before the said Commission at Shreveport, Louisiana, on July 13, 1959, there to testify at a hearing to be conducted under certain rules of procedure, copies of which were annexed to each summons, and a photocopy of which is annexed to these proceedings, marked "Exhibit A" and made a part hereof.

5. That complainants are informed and believe that said hearing is purportedly conducted under Section 104 (A)(1) of the Civil Rights Act of 1957 (Public Law 85-315, 85th Congress) for the purpose of investigating allegations in writing under oath or affirmation that certain citizens are being deprived of "their right to vote . . . by reason of their color, race, religion, or national origin." Complainants have been further informed and believe that such written allegations are in the nature of charges against your complainants which, if true, would constitute ground for criminal and civil proceedings against them. That your complainants have never been informed of the specific nature of any such complaints or complaint against them, the names of their accusers, or any facts against which any complaint might be based.

[fol. 4] 6. That Complainant especially alleges that the Commission on Civil Rights, acting through its duly authorized agents and representatives have repeatedly informed W. M. Shaw, Esq., Attorney for Complainants, and the Attorney General of the State of Louisiana, that said Commission would, under no circumstances, furnish any-

one accused of depriving individuals of their "right to vote" with copies of the written complaint required by Section 104(A)(1) of the Civil Rights Act upon which such investigations are to be based, nor would it permit any such accused persons to examine the same, nor would it divulge the name or names of the accusers who attest to the secret complaints. That specifically by letter dated April 14, 1959, Gordon M. Tiffany, Staff Director, Civil Rights Commission, advised Mr. W. M. Shaw that the said Commission had adopted a resolution to this effect. That by telegram dated May 29, 1959, the aforesaid Gordon M. Tiffany advised Honorable Jack P. Gremillion, Attorney General of Louisiana, of this position assumed by the Civil Rights Commission. That all of the foregoing has been done without any authority or sanction on the part of the Congress of the United States, the Chief Executive of the United States, or any other branch of the U. S. Government. That this action on the part of the so called "Civil Rights Commission" is "ultra vires" and without sanction in law or practice. That they constitute a flagrant denial of due process of law to your complainants.

That in addition, the rules of procedure attached to the subpoenas under which this hearing is supposed to be held are unconstitutional, ultra vires, null and void in the following respects:

(a) Paragraph 2 (E and G) set up a procedure whereby your appearers can be forced into a type of secret inquisition unknown to Anglo-American jurisprudence since the date of the Star Chamber and thereby forced to testify with regard to accusations made against them in secret and by nameless accusers and informants, and that should such complainants thereafter reveal any of their testimony given in such secret inquisitional hearing, such complainant can be fined and imprisoned. That the enormity of this [fol. 5] deprivation of basic rights and freedom of American citizens is such that it is difficult for anyone trained in the law to conceive that such a thing would be attempted in this day and age.

(b) Paragraph 2 (C and D) and 3 (I) provide for a system whereby a person called to testify can be completely deprived of his right to be represented by

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counsel of his own choosing and/or to protect himself in the course of the hearing by cross-examining their accusers, objecting to illegal and unconstitutional procedures on the part of the Commission and all of the other protections which a counsel learned in the law affords to his client.

(C) That Paragraph 2 (H) attempts to deny the right of judicial review to anyone appearing as a witness before it, in the event that witness should feel that the testimony sought to be adduced from him or the evidence which he might be required to produce is not pertinent or relevant to the purposes of the Commission. That under this provision complainants can be effectively denied due process of law, the right to be free from unreasonable searches and seizure and other basic rights inherent in any free society and which the Constitution sought to protect against invasions by minions of the Federal Government.

7. Complainants allege upon information and belief that the subpoenas which were issued to them were not issued in accordance with the Civil Rights Act and particularly Section 104(F) of said act, in that said subpoenas were not signed by the chairman of the Commission nor were they served by a person designated by such chairman.

8. That the several acts and actions herein complained of harass the complainants in pursuit of their several occupations and tend to defame complainants in the eyes of the public and prevent them from pursuing their present occupations and/or new occupations which they might wish to follow.

9. Complainants allege that defendants and each of them, while acting in their official capacity as set out hereinabove acted in concert and engaged in a common design, and in the past conspired and are now conspiring with each other, to deny complainants their rights and privileges as citizens of the State of Louisiana and the United States; that the defendants and each of them while acting in concert and engaged in a common design with each other, did in the [fol. 6] past conspire, are now conspiring, and threaten to continue to conspire together with each other to deny and deprive complainants of their right to be confronted by

their accusers, to know the nature and character of the charges made against them in official complaints lodged with the "Civil Rights Commission", to deprive them of counsel, to deny them their constitutional prerogative of immunity from testifying against themselves, all in violation of Amendments 1, 4 and 5 of the U. S. Constitution and 43 U.S.C. 1985.

10. Complainants are now and threaten to continue to be greatly harmed, damaged and injured by the wrongful, knowing and purposeful acts of the defendants and each of them, and they have no plain, adequate, or efficient remedy at law to redress the wrongful, knowing and purposeful acts of defendants other than this action for injunctive relief, that any other remedy to which they could be remitted would be attended by such uncertainties and delays as to amount to a substantial denial of relief, would involve a multiplicity of suits and would cause complainants irreparable harm and injury and occasion them severe hardship, vexation and delay, and that injunctive relief is necessary in the premises; that such relief is especially necessary, prior to a hearing because of the present and continuing irreparable injuries being suffered by your complainants.

IV

Prayer

Wherefore, the premises considered, complainants pray that upon the filing of this complaint, the Court:

1. Issue a temporary restraining order and judgment herein immediately and without notice in accordance with law upon defendants, their agents, servants, employees, successors in office and those acting in concert with them, enjoining them and each of them from:

(a) Requiring any testimony or the production of any records by complainants herein at the hearing scheduled for July 13, 1959, at Shreveport, Louisiana, or any specific hearing which may be called or scheduled by defendant herein until time as defendants have furnished or caused to be furnished to [fol. 7] complainant, copies of the charges and/or

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sworn complaints, together with the names and addresses of those persons making the charges or filing the sworn complaints upon which the scheduled hearing is alleged to be based and until such time as complainants have had reasonable time to examine, study and investigate the furnished information above described and requested; and

(b) From conducting any hearing pursuant to the rules and regulations adopted by defendants, a copy of which rules and regulations is attached hereto and made a part of this complaint, as well as conducting any hearing pursuant to the resolution adopted by defendants of date April 10, 1959; and

(c) Conspiring together with themselves or with any other person or persons to deny complainants their rights and privileges as citizens of the State of Louisiana and of the United States or to deny complainants their right to be confronted by their accusers, to know the nature of the charges made against them, or to deprive them of counsel or their constitutional prerogatives against unreasonable searches and seizures, immunity from testifying against themselves, all in violation of Amendments 1, 4 and 5 and 6 of the U. S. Constitution and 42 U.S.C. 1985; and

(d) From committing any of the aforesaid acts not only against complainants, but against any members of the class which complainants represent in these proceedings.

2. That this cause be advanced on the docket of this Honorable Court and set for a speedy hearing according to law, and upon such preliminary hearing that a temporary injunction issue enjoining and restraining defendants, their agents, servants, employees, successors in office and those acting in concert with them from the several acts and under the same terms and conditions as prayed for in paragraph 1 of this prayer.

3. That upon final hearing of this cause upon its merits this Honorable Court enter a permanent injunction that will enjoin and restrain the aforesaid defendants, their agents, servants, employees, successors in office and all persons acting in concert with them forever from the

several acts and under the same terms and conditions as prayed for in paragraphs 1 and 2 of this prayer.

4. That this Honorable Court allow complainants to [fol. 8] recover costs incurred herein and grant any other orders or relief which may appear fitting, proper or just in the premises whether the same is based upon the preliminary hearing prayed for or the trial of the case on its merits.

Meadors, Shaw and Meadors, By: W. M. Shaw,
Attorney for Plaintiffs.

Order

On further consideration of this cause;

It Is Ordered by the Court that the application for interlocutory injunction in the above case be fixed for hearing at ————, Louisiana, on ————————.

Shreveport, Louisiana, July ———, 1959.

[fol. 9] Duly sworn to by J. A. H. Slawson. Jurat omitted in printing.

[fol. 10] Exhibit "A" to Complaint

Rules of Procedure for Hearings of the Commission on Civil Rights

1. Under Public Law 85-315, Section 105(f), the Commission on Civil Rights may hold hearings and issue subpenas or authorize a subcommittee to hold hearings and issue subpenas under the following conditions:

The Commission or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be

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issued in accordance with the rules of the Commission as contained in section 102(j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

2. All such hearings of the Commission will be governed by the following statutory Rules of Procedure provided in Section 102 of Public Law 85-315:

(a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

[fol. 11] (c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

(f) Except as provided in sections 102 and 105(f) of this Act, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in

writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

[fol. 12] (i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

3. In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85-315, incorporated in Rule 2 above, shall be appli-

[fol. 13] cable to and govern the proceedings of all subcommittees appointed by the Commission pursuant to Section 105(f) of Public Law 85-315, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission or of any sub-committee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings

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pursuant to the provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at a meeting at which at least a quorum of four members is present.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission by the Chairman or by the Chairman upon the request of a member of the Commission.

(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased [fol. 14] by a witness pursuant to Rule 2 (i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or subcommittee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commisssion or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person

that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news [fol. 15] reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

4. Public Law 85-315, Section 105(g) provides that in case of contumacy or refusal to obey a subpena of either the Commission or a subcommittee thereof, any district court of the United States or the United States court of any Territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(As approved and adopted by the Commission July 1, 1958)

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[fol. 16] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER—Filed July 10, 1959

Comes now plaintiffs and move the Court, upon the verified complaint herein for a temporary restraining order against defendants in the above entitled and numbered cause, enjoining them, their agents, servants, employees, successors in office and those acting in concert with them from:

(1) Requiring any testimony from or the production of evidence by any of the plaintiffs or members of the class to which they belong at the hearing scheduled for July 13, 1959 at Shreveport, Louisiana, or any other hearing which might be called by defendants herein until such time as complainants and/or each witness called has been furnished with a copy of the sworn complaint or complaints covering the matters to which they are called to testify together with the names of the persons making the complaint and until such further time as complainants have had a reasonable time to examine and study the same.

(2) Conducting any hearing pursuant to the rules and regulations adopted by defendants and attached to the subpoenas served on your complainants, as well as any hearing conducted pursuant to the resolution adopted by defendant on April 10, 1959, and

(3) Conspiring together with themselves or other persons to deprive the complainants and/or the members of the class to which they belong of any of their constitutional rights, privileges and immunities.

Plaintiffs further move for said restraining order to issue forthwith without notice on the grounds that im- [fols. 17-83] mediate, substantial and irreparable damage and injury will result to plaintiffs before notice can be served and a hearing had thereon, as more fully appears from the verified complaint. This irreparable injury will

result because plaintiffs are currently under subpoena to testify before said Committee on July 13, 1959, and sufficient time does not remain to have a hearing on the application for a preliminary injunction.

If this temporary restraining order be granted, the injuries, if any, to defendants herein, if subsequent judgments be in their favor will be inconsiderable and will be adequately indemnified by bond.

Meadors, Shaw and Meadors, By: W. M. Shaw, Attorney for Plaintiffs, P. O. Box 209, Homer, Louisiana.

(Clerk's Note. Hereafter Appears Transcript of Proceedings of July 10, 1959. It Appears in the Record in the Companion Case of No. 549 and Is Not Duplicated Here)

[fol. 84] [File endorsement omitted]

In the United States District Court for the Western District of Louisiana, Shreveport Division

Civil Action No. 7479

Mrs. Margaret M. Larche, et al., in Their Individual Capacities and as Registrars of Voters in and for Their Parishes, of the State of Louisiana

vs.

John A. Hannah, et al., Individually and as Members of the Commission on Civil Rights

Temporary Restraining Order—July 12, 1959

Upon the verified complaint heretofore filed herein, and upon motion by complainants for a preliminary injunction and for a temporary restraining order against defendants, it appearing to this Court that the complaint seeks a judgment and enjoining the defendants,

John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan;

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Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas;

John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia;

Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana;

Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida;

George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D. C.,

individually and in their capacity as members of the Commission on Civil Rights created by Public Law 85-315, 85th Congress, 71 Stat. 634; U.S.C.A. 42:1975 et seq., their agents, servants, employees and attorneys from enforcing, [fol. 85] attempting to enforce, proceeding under, or holding any hearings pursuant to Public Law 85-315, 85th Congress, 71 Stat. 634; U.S.C.A. 42:1975 et seq., and the rules of procedure promulgated pursuant thereto as concerns complainants herein and others similarly situated upon the ground, among others, that the aforesaid statute is unconstitutional, this Court finds that irreparable damage will be caused to complainants unless a temporary restraining order is issued against the said defendants, and all of them, for the reasons stated in a written ruling this day filed, and made part hereof by reference.

Now, Therefore it is ordered, adjudged and decreed that the said,

John A. Hannah, whom complainants allege to be a resident of East Lansing, Michigan;

Robert G. Storey, whom complainants allege to be a resident of Dallas, Texas:

John S. Battle, whom complainants allege to be a resident of Charlottesville, Virginia;

Rev. Theodore S. Hesburgh, whom complainants allege to be a resident of South Bend, Indiana;

Doyle E. Carlton, whom complainants allege to be a resident of Tampa, Florida;

George M. Johnson, whom complainants allege to be a resident of the State of California, presently residing in Washington, D. C.,

individually and in their capacity as members of the Commission on Civil Rights, created by Public Law 85-315, 85th Congress, 71 Stat. 634; U.S.C.A. 42:1975 et seq., together with their agents, servants, employees and attorneys, be restrained temporarily and enjoined from proceeding under or holding any hearings pursuant to said Public Law, as concerns complainants herein and others similarly situated, [fols. 86-104] and particularly as regards the hearing scheduled by the Commission on Civil Rights fixed for July 13, 1959, at Shreveport, Louisiana, until the hearing and determination of the motion for a preliminary or interlocutory injunction by a full Court of three judges, to be held, as hereinafter ordered, on July 22, 1959.

It is further ordered that a rule nisi issue herein, directed to said parties hereby restrained, commanding them to show cause, if any they can, at 9:30 a.m. July 22, 1959, at the Federal courtroom, 3rd floor, United States Post Office and Courthouse, Shreveport, Louisiana, why the preliminary or interlocutory injunction prayed for by plaintiffs, should not be granted.

Issued at Shreveport, Louisiana, at 5:12 o'clock p.m., this 12th day of July, 1959.

(Sig.) Ben C. Dawkins, Jr., United States District Judge.

(Clerk's Note: Hereafter follows Ruling on Application for Temporary Restraining Order. It is identical with the ruling entered in the companion case of No. 549, and is not duplicated here).

[fols. 105-163] (Clerk's Note: Hereafter appears Transcript of Proceedings of July 13, 1959. It appears in the record in the companion case No. 549, and is not duplicated here.)

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[fol. 164] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

MOTION OF COMPLAINANTS FOR CONTINUING IN EFFECT TEMPORARY RESTRAINING ORDER AND FOR CONTINUANCE OF RULE NISI FOR PRELIMINARY INJUNCTION—Filed July 22, 1959

To the honorable, the Judges of the United States District Court, for the Western District of Louisiana, Shreveport Division:

On motion of William M. Shaw, Attorney for Petitioners herein; and,

On suggesting to the Court that a temporary restraining order was issued herein July 12, 1959, at or about 5:30 p.m. against the defendants herein which restraining order will expire on July 22, 1959 at 9:30 a.m.; and,

On further suggesting to the Court that the rule nisi issued herein is set for hearing at 9:30 a.m., August 7, 1959; and,

On further suggesting to the Court that your movants and defendants' counsel have been informed, that due to the condition of the docket in this Honorable Court and previous commitments made prior to the issuance of the above mentioned orders that it will be impossible for the said rule to be heard at the time and place previously fixed, namely, July 22, 1959:

It is ordered by the Court, that the temporary restraining order heretofore issued be continued in full force and effect from July 22, 1959, until 9:30 a.m. August 1st, 1959, or until the rule for preliminary injunction be heard, and that the hearing on the rule nisi be likewise continued from July 22, 1959, until 9:30 a.m. August 7, 1959.

s/ Ben C. Dawkins, Jr. United States District Judge.

Issued at Shreveport, Louisiana, at 9:30 o'clock, on this, the 22nd day of July, 1959.

[fol. 165] Above motion prepared and respectfully submitted by William M. Shaw, Attorney for Petitioners.

s/ W. M. Shaw, Box 209, Homer, La.

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[fol. 166] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

NOTICE OF MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT —Filed July 31, 1959

Please take notice that the undersigned will bring the attached motion for summary judgment on for hearing before the Honorable Ben C. Dawkins, Jr., at 9:30 a.m., August 7, 1959 at the United States Post Office and Courthouse, Shreveport, Louisiana, or as soon thereafter as counsel may be heard, and that the motion will be submitted upon the complaint and answer and exhibits attached thereto on file.

/s/ W. Wilson White, Assistant Attorney General.
T. Fitzhugh Wilson, United States Attorney.

To: W. M. Shaw, Esq., Meadors, Shaw and Meadors, P. O. Box 209, Homer, Louisiana, Attorney for Plaintiffs.

[fol. 167] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT—Filed July 31, 1959

Comes now the Attorney General of the United States, by W. Wilson White, Assistant Attorney General and T. Fitzhugh Wilson, United States Attorney, as attorneys for the United States Commission on Civil Rights, and as

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attorneys for John A. Hannah, Robert G. Storey, John S. Battle, Theodore S. Hesburgh, Doyle N. Carlton, and George M. Johnson, the members of said Commission in their official and individual capacities and show this Court as follows:

1. The Complaint fails to state a claim against defendants upon which relief can be granted.
2. Injunctive relief is unavailable because there is no legal injury or threat of legal injury.
3. Injunctive relief is unavailable because plaintiffs must pursue the remedies provided by law.
4. The action is in effect an unconsented suit against the United States or in the alternative the United States is an indispensible party which has not consented to be sued.

[fol. 168] Wherefore the premises considered defendants by their attorneys respectfully move this court to enter summary judgment for the defendants, in accordance with the provisions of Rule 56(b) of the Rules of Civil Procedure, on the ground that the pleadings and exhibits attached thereto show that the defendants are entitled to judgment as a matter of law.

/s/ W. Wilson White, Assistant Attorney General.
T. Fitzhugh Wilson, United States Attorney.

[fol. 169] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

MOTION OF DEFENDANTS TO VACATE AND DISSOLVE TEMPORARY RESTRAINING ORDER—Filed July 31, 1959

Comes now the Attorney General of the United States, by W. Wilson White, Assistant Attorney General, and T. Fitzhugh Wilson, United States Attorney, as attorneys for the United States Commission on Civil Rights and as attorneys for John A. Hannah, Robert G. Storey, John S. Battle, Theodore S. Hesburgh, Doyle E. Carlton, and

George M. Johnson, the members of said Commission in their official and individual capacities, and move this Court to vacate and dissolve the temporary restraining order entered in this cause and in support of such motion show the Court as follows:

1. That said temporary restraining order was entered by this Court on July 12, 1959, at or about 5:30 p.m., and that on July 22, 1959 it was extended by order of this Court to August 1, 1959, at 9:30 a.m. or until the rule for a preliminary injunction could be heard.

2. That the rule for a preliminary injunction in this cause has been set for hearing by the same order of this Court of July 22, 1959, referred to above, for August 7, 1959, at 9:30 a.m.

3. That Rule 65 of the Rules of Civil Procedure provides for the issuance of a temporary restraining order for a period of 10 days, and permits an extension of such order for only one additional period of 10 days.

[fol. 170] Wherefore, it appearing that August 7, 1959, to which date the order of the Court extends the temporary restraining order, is beyond the maximum time permitted by said Rule 65, it is respectfully moved that this Court vacate and dissolve the temporary restraining order in this cause.

(S.) W. Wilson White, Assistant Attorney General.
T. Fitzhugh Wilson, United States Attorney.

[fol. 171] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

ANSWER—Filed July 31, 1959

In response to the rule to show cause issued by this Court, comes now the Attorney General of the United States by W. Wilson White, Assistant Attorney General,

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and T. Fitzhugh Wilson, United States Attorney, as attorneys for the United States Commission on Civil Rights, and as attorneys for John A. Hannah, Robert G. Storey, John S. Battle, Theodore S. Hesburgh, Doyle E. Carlton, and George M. Johnson, the members of said Commission in their official and individual capacities, and answer the complaint herein as follows:

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Injunctive relief is unavailable because there is no legal injury or threat of legal injury to plaintiffs.

Third Defense

Injunctive relief is unavailable and premature because plaintiffs have adequate remedies at law.

[fol. 172] Fourth Defense

The court lacks jurisdiction because the action is in effect an unconsented suit against the United States, or in the alternative because the United States is an indispensible party to this action and has not consented to be sued.

Fifth Defense

1. In answer to paragraphs I and II defendants are not required to plead as the allegations are conclusions at law, but insofar as answer may be required defendants deny each and every allegation contained in paragraphs I and II.

2. In answer to paragraph III:

(a) defendants admit the allegations contained in subparagraphs 1, 2, and 4;

(b) with respect to subparagraph 3 defendants are not required to plead, as the allegations contained therein are conclusions at law, but insofar as answer

may be required defendants deny each and every allegation contained in said subparagraph;

(c) defendants admit that part of subparagraph 5 which alleges that the hearing of the Commission on Civil Rights was to be conducted for the purpose of investigating allegations in writing on oath or affirmation that certain citizens are being deprived of their right to vote on account of race or color, and that the names of persons making such allegations and the content of such allegations have not been revealed to plaintiffs, but as to the remainder of said subparagraph defendants are not required to plead, as the matters contained therein are conclusions at law, but insofar as answer may be required such allegations are denied;

[fol. 173] (d) defendants admit that part of subparagraph 6 which alleges that the Commission adopted the resolution referred to therein, and that counsel for plaintiffs and the Attorney General of the State of Louisiana were informed of the contents of said resolution, but with respect to the remainder of said subparagraph defendants are not required to plead as the allegations contained therein are conclusions of law, but insofar as answer may be required defendants deny each and every allegation contained in said subparagraph;

(e) defendants deny the allegations contained in subparagraph 7, to wit: that the subpoenas were not signed by the Chairman of the Commission or served by persons designated by him. On the contrary such subpoenas were duly issued and served in accordance with law;

(f) defendants deny each and every allegation contained in subparagraphs 9 and 10. In connection with said subparagraphs defendants allege that the purpose and only purpose of the Commission's actions in setting up the hearing complained of herein was to fulfil its statutory obligation under the Civil Rights Act of 1957, Public Law 85-315.

3. With respect to paragraph IV defendants are not required to plead.

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[fol. 174] Wherefore it is respectfully requested that this Court discharge the rule to show cause, dismiss this action and enter judgment for defendants.

/s/ W. Wilson White, Assistant Attorney General
T. Fitzhugh Wilson, United States Attorney.

[fol. 175] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

STIPULATION IN AND BETWEEN PLAINTIFFS AND DEFENDANTS RE CIVIL ACTION NO. 9146—Filed Aug. 7, 1959

I

The Stipulation (copy attached) filed in this Court on August 7, 1959 in Civil Action No. 7479 shall be considered for all purposes as having been entered into between counsel in this suit insofar as it is relevant and material thereto.

II

A suit was filed on June 30, 1959 against plaintiffs Diaz D. McElveen, E. Ray McElveen and Eugene Farmer, alleging a violation of 42 U.S.C. 1971, Civil Action No. 9146, Eastern District of Louisiana. It is agreed that this Court may take judicial notice of the record in that case.

III

Attached hereto is the original subpoena served on plaintiff E. Ray McElveen, which subpoena is similar in all pertinent respects to subpoenas issued to all other plaintiffs herein.

IV

Each of plaintiffs, if called to testify herein, would state that if a hearing were held by the Commission and testimony of witnesses was adduced to the effect that plaintiffs were depriving certain citizens of their right to vote on

account of race or color, in the opinion of each of the plaintiffs irreparable harm would be done to his reputation [fol. 176] and adversely affect his occupation.

s/ W. M. Shaw, Attorney for Plaintiffs. W. Wilson White, Attorney General of the United States. T. Fitzhugh Wilson, United States Attorney, Western District of Louisiana, Attorneys for Defendants.

[fol. 177] IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

Civil Action No. 7479

MRS. MARGARET M. LARCHE, et al., in their individual capacities and as Registrars of Voters in and for their Parishes of the State of Louisiana, Complainants,

vs.

JOHN A. HANNAH, et al., individually and as members of the Commission on Civil Rights, Defendants

STIPULATION IN AND BETWEEN COMPLAINANTS AND DEFENDANTS—Filed August 7, 1959

1

Complainants, Mrs. Margaret M. Larche, Mrs. Mae Lucky, Curtis M. Thomas, Mrs. W. P. Clements, Mrs. Mary K. Bryce, Mrs. Lannie L. Linton, Mrs. Pauline A. Culpepper, Sidney W. Platt, Cecil E. Manning, Miss Katherine Ward, B. W. Berry, Henry Earl Palmer, Thomas W. Thompson, Mrs. Estelle Wilder, Joseph Walton Crawford, Johnie L. Kelly, and U. Charles Mitchell, are citizens of the United States and the State of Louisiana, taxpayers, qualified voters, and Registrars of Voters in and for their respective parishes of the State of Louisiana.

2

Defendants: John A. Hannah, a resident of East Lansing, Michigan; Robert C. Storey, a resident of Dallas,

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Texas; John S. Battle, a resident of Charlottesville, Virginia; Rev. Theodore S. Hesburgh, a resident of South Bend, Indiana; Doyle E. Carlton, a resident of Tampa, Florida; and George M. Johnson, a resident of the State of California, presently residing in Washington, D.C., are citizens of the United States and, as well, members of the Commission on Civil Rights.
[fol. 178]

3

The Attorney General of Louisiana, Honorable Jack P. F. Gremillion, is legal counsel designated by the legislature for all Registrars of Voters of the State of Louisiana, and the other counsel of record are attorneys for the complainants respectively in their individual capacities.

4

Honorable Gordon M. Tiffany is the duly appointed Staff Director for the Commission on Civil Rights and has acted in this matter by virtue of such authority and under the authority of the Commission on Civil Rights.

5

The Commission on Civil Rights received sixty-seven (67) written allegations prior to February 27, 1959, under oath or affirmation, from certain citizens of the United States alleging they were citizens of the State of Louisiana and that they had been deprived of their right to vote because of their color, race, religion, or national origin, and that these were received sometime prior to February 27, 1959, a number of which alleged generally that the plaintiffs in suit, through their acts and deeds, had caused such deprivation.

6

That after the Commission on Civil Rights received these complaints, investigators of the Commission were sent to the State of Louisiana and investigated the same.

7

The Commission, through its Staff Director, Gordon M. Tiffany had conferences with Attorney General Jack P. F.

Gremillion, concerning the possibility of submitting questionnaires to Registrars of Voters in lieu of a hearing. Prior thereto, attorney W. M. Shaw, on behalf of his client, Mrs. Lannie L. Linton, addressed a Letter to the Com-[fol. 179] mission dated March 14, 1959 (copy attached), which was replied to by the commission under date of April 14, 1959, signed by Director, Tiffany (copy attached), and that the resolution of the Commission quoted in said letter of April 14th was duly passed by the Commission and represents its official action.

8

Thereafter, Director Tiffany furnished to each of the Registrars and to Attorney General Jack P. F. Gremillion a questionnaire (copy attached). After conference with the Registrars of Voters, Attorney General Gremillion addressed a letter to Director Tiffany dated May 28, 1959 (copy attached) to which Director Tiffany replied on May 29, 1959 by telegram (copy attached), which was replied to by Attorney General Gremillion on June 2, 1959 (copy attached). Following this communication, a letter dated June 4, 1959 (copy attached) from Gordon M. Tiffany to Attorney General Gremillion was received.

9

That the Commission on Civil Rights at an official meeting held in Washington, D. C. on June 10, 1959, authorized a hearing on Louisiana voting complaints, pursuant to Section 105 f of the Civil Rights Act of 1957, 71 Stat. 634. The hearing was scheduled to be held on July 13, 1959 in Shreveport, Louisiana.

10

Thereafter the Commission duly issued subpoenas in connection with the aforesaid hearing of July 13, 1959 and caused said subpoenas to be served on plaintiffs in suit No. 7479 by the United States Marshal. Subpoenas were also served by said Marshal on the plaintiffs in suit No. 7480 on the docket of this Court. The remainder of the said subpoenas were served through the Commission's own process. The total number of subpoenas caused to be issued by the Commission numbered approximately sixty (60). True

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and accurate copies of the subpoenas served on the plaintiffs in the two respective suits are attached to said petitions, the [fol. 180] originals of which were all served prior to July 9, 1959. Attached to these subpoenas was a copy of the official Rules of Procedure For Hearings of the Commission on Civil Rights as well as a copy of the said Civil Rights Act, and each plaintiff was tendered mileage and per diem in accordance with the said Act.

11

Exhibits A through T inclusive, attached to and made a part of the affidavit filed herein by Jack P. F. Gremillion, Attorney General of the State of Louisiana, are true and accurate copies of the originals of said copies, provided, however, that defendants reserve the right to make objections to the relevancy and materiality thereof.

Attorney for Complainants: Jack P. F. Gremillion, Attorney General of the State of Louisiana. Attorneys for Defendants: W. Wilson White, Assistant Attorney General of the United States. T. Fitzhugh Wilson, United States Attorney, Western District of Louisiana.

[fol. 181-285] EXHIBIT TO STIPULATION

UNITED STATES OF AMERICA COMMISSION ON CIVIL RIGHTS

To: E. Ray McElveen.

at: N. Borden Drive, Bogalusa, Louisiana.

Greetings:

Pursuant to lawful authority (P. L. 85-315), You Are Hereby Commanded to be and appear before the Commission on Civil Rights of the United States of America, or a duly appointed Subcommittee thereof, on July 13, 1959 at 9:00 o'clock, a.m., at their Commission Hearing Room at U. S. District Court Room, U. S. Post Office Bldg., 424 Texas Street, Shreveport, Louisiana, then and there to testify what you may know relative to subject matters of inquiry committed by law to the consideration of said Com-

mission, and not to depart without leave of said Commission.

You Are Hereby Commanded to bring with you and produce before said Commission, or a duly authorized Subcommittee thereof, the following:

Hereof Fail Not, as you will answer your default under the pains and penalties in such cases made and provided in Sections 105(f) and 105(g) of the Civil Rights Act of 1957, reproduced herein.

To United States Marshal to serve along with the attached copy of the Rules of Procedure approved by the Commission on Civil Rights, and a copy of the Civil Rights Act of 1957.

Given under my hand this 29th day of June in the year of our Lord, 1959.

J. A. Hannah (Chairman—Chairman of Subcommittee)

(Clerk's Note: Hereafter appears Transcript of Proceedings of August 7, 1959. It appears in the Record in the Companion Case of No. 549 and it is not Duplicated Here).

[fol. 286] [File endorsement omitted]

In the United States District Court for the Western District of Louisiana, Shreveport Division

[Title omitted]

Amendment to Answer—Filed August 7, 1959

The answer to the complaint heretofore filed on behalf of the defendants is amended in the following respect:

Subparagraph (f) of Paragraph 2 of the fifth defense is amended so that the first sentence thereof shall read as follows:

> defendants deny each and every allegation contained in subparagraphs 8, 9, and 10.

s/ W. Wilson White Assistant Attorney General.
T. Fitzhugh Wilson, United States Attorney.

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[fol. 287-307] [File Endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISON

Civil Action No. 7480

J. A. H. SLAWSON, et als.,

vs.

JOHN A. HANNAH, et als.

Ben C. Dawkins, Jr., Chief Judge.

RULING ON PRELIMINARY INJUNCTION—Nov. 9, 1959

For the reasons assigned in the majority opinion in Civil Action No. 7479, entitled "Mrs. Margaret M. Larche, et. als., vs. John A. Hannah, et als.", dated October 6th, 1959, copy of which is annexed hereto and made a part hereof by reference,

The preliminary injunction prayed for by plaintiffs will be Granted.

Thus Done and Signed in Chambers on this 9th day of November, 1959.

Ben C. Dawkins Jr., United States District Judge.

(CLERKS NOTE: THE OPINION REFERRED TO APPEARS IN THE RECORD IN THE COMPANION CASE OF No. 549 AND IS NOT DUPLICATED HERE).

[fol. 308] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISON

Civil Action No. 7480

J. A. H. SLAWSON, et als.,

vs.

JOHN A. HANNAH, et als.

Ben C. Dawkins, Jr., Chief Judge.

ORDER ON OPINION—Nov. 9, 1959

For the reasons assigned in the majority opinion in Civil Action No. 7479, entitled "Mrs. Margaret M. Larche, et als, vs. John A. Hannah, et als", dated October 6th, 1959, copy of which is annexed hereto and made a part hereof by reference,

It Is Ordered, Adjudged and Decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiffs, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

This injunction does not prohibit all hearing pursuant to Public Law 85-315, 85th Congress, 42 U.S.C.A. 1975, et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

[fol. 309-329] Thus Done and Signed in Chambers on this the 9th day of November, 1959.

Ben C. Dawkins, United States District Judge.

(CLERK'S NOTE: THE OPINION REFERRED TO APPEARS IN THE RECORD IN THE COMPANION CASE OF NO. 549 AND IS NOT DUPLICATED HERE.)

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[fol. 330] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

NOTICE OF APPEAL—Filed Nov. 19, 1959

Notice is hereby given that John A. Hannah, et al., the defendants above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order granting an injunction entered in this section on November 9, 1959.

/s/ Joseph M. F. Ryan, Jr., Acting Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D. C. T. Fitzhugh Wilson, United States Attorney, Western District of Louisiana, Shevreport, Louisiana, Attorneys for Appellants.

[fol. 331] CERTIFICATE OF SERVICE OMITTED IN PRINTING

[fol. 332] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION

[Title omitted]

DESIGNATION OF RECORD—Filed Nov. 19, 1959

The appellants (defendants in the above-entitled case) hereby designate, for transmission to the United States Court of Appeals for the Fifth Circuit, the entire record in the District Court, to constitute the record on appeal.

/s/ Joseph M. F. Ryan, Jr., Acting Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D. C. T. Fitzhugh Wilson, United States Attorney, Western District of Louisiana, Shreveport, Louisiana.

[fol. 333] CERTIFICATE OF SERVICE OMITTED IN PRINTING

(Here follow 2 Photolithographs, side folios 334, 335)

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32A

[fol. 334] DOCKET

CASE NO. 7480 ✓

SHREVEPORT	TITLE OF CASE ✓	ATTORNEYS
	J.A.H.SLAWSON, EDWARD C. HOPGOOD, RAY McELVEEN, DIAZ McELVEEN, PAUL FARMER, and EUGENE FARMER 2 vs. JOHN A. HANNAH, Individually and as a member of the COMMISSION ON CIVIL RIGHTS; et al * (& the other five members thereof)	For Plaintiffs: Meadors, Shaw and Meadors, W.M.Shaw, Homer, Louisiana T.FITZHUGH WILSON, U.S.ATTY., PO BOX 33, Shreveport, La. for the Commission & its individual members. [illegible], Asst.Atty.Gen., Washington, D.C. For Defendants; C.E.Clark, Legal Asst. to Hon. Robt.G. Storey, Vice-Chairman of Commission, Washington, D.C.; Gordon M.Tiffany, Director, Comm.on Civil Rights, Earl R.Barnhard, Atty for Comm.on Civil Rights, A.William Mottolese, Atty for Comm. on Civil Rights, Ben Brooks,

Suit under T.42, Sec.1985&1331, USC & Amendments I, IV, V & VI of the U.S.Constitution for a temporary restraining order & injunction against

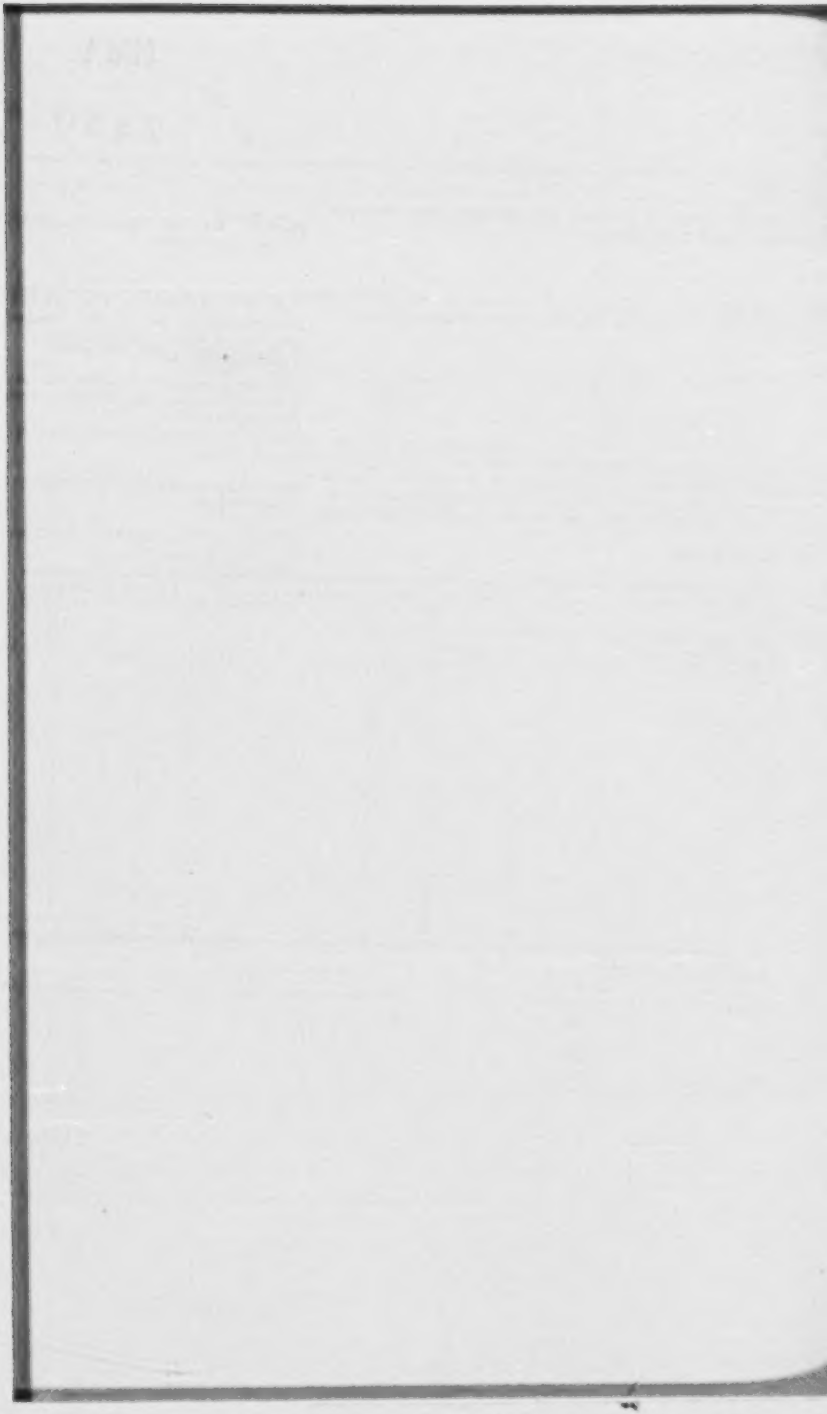
Basis of action: Commission enjoining it from holding hearing at S'port., La. 7-13-59 & requiring production of documents, etc.

Jury trial claimed by NI

on , 19

DATE	PLAINTIFF'S ACCOUNT	RECEIVED	DISBURSED	DATE	DEFENDANT'S ACCOUNT	RECEIVED	DISBURSED
1959					D. Robert Owen		
7-10	Jack P.F.Gremillion	15.00					
7-16	Treas of US T-[illegible] 3		15.00				

ABSTRACT OF COSTS		
1959 TO WHOM DUE	AMOUNT	RECEIPTS, REMARKS, ETC.
7-10, Clerk's	15.00	
7-13, USM	9.00	
7-17, USM	7.20	
7-22, USM	2.00	
1-19, Notice of Appeal	5.00	



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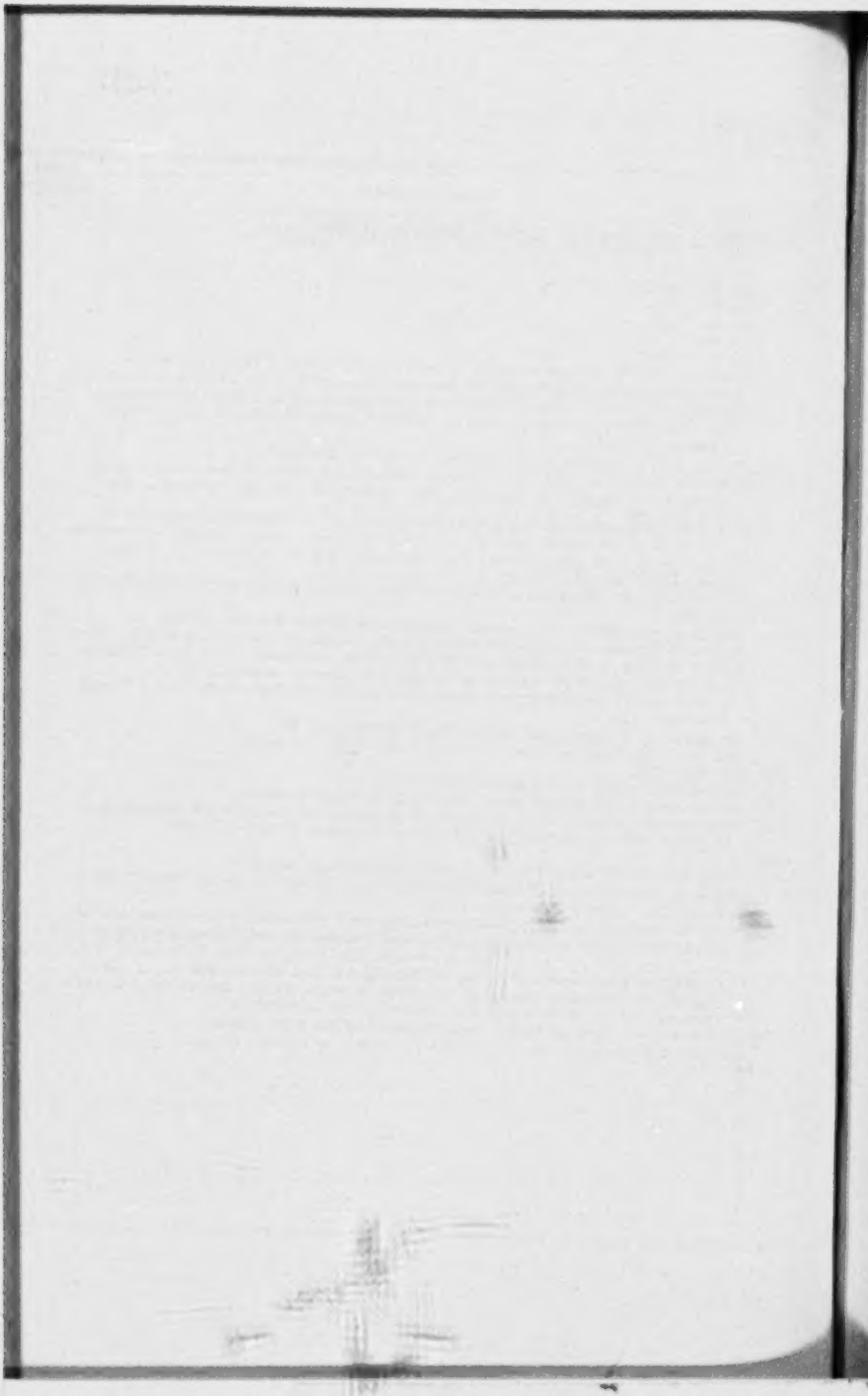
[fol. 333]

7480

DATE 1959	SHREVEPORT	AMOUNT REPORTED ON ENCLOSURE RETURNS
7-10	Original complaint with attached exhibits, filed.	
"	Motion for temporary restraining order, filed.	
"	Original Summonses (6), with copies for service, issued.	
7-10	See No. 7479.	
7-12	See No. 7479.	
7-12	See No. 7479.	
7-12	See No. 7479.	
7-12	See No. 7479.	
7-12	See No. 7479.	
7-13	Marshal's return on summonses (6) filed: Robert C.Storey served in person on 7-10-59; Other five summonses returned unexecuted - See returns for details.	
"	Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Robert C.Storey, John S. Battle & George M.Johnson each served in person 7-12-59.	
7-14	See No. 7479. (Hearing had on motion for bond - denied.)	
7-17	Marshal's return on writs of temporary restraining order & rule to show cause (3) filed: Rev.Theodore S.Hesburgh, Doyle E.Carlton and John A.Hannah, each served 7-13-59.	
7-22	Motion by Plffs. & order continuing in force & effect temporary restraining order to 9:30 AM 8-1-59, as well as the rule to show cause, which is continued to 8-7-59 at 9:30 A.M., filed. Certified copy thereof delivered to Marshal to be served on U.S.Attorney.	
7-22	Marshal's return on service of 7-22-59 order filed: Defts. served thru US Atty. 7-22-59.	
7-31	Motion by defendants for summary judgment and notice thereof, filed.	SJ
"	Motion by Defendants to vacate and dissolve temporary restraining order, filed.	M
"	Answer to Rule to Show Cause and to plaintiffs' complaint filed by defendants	A RT
"	Brief by defendants in support of motion for summary judgment, filed. (A copy of all documents this date filed was mailed 7-31-59 to Judges Wisdom & Hunter). ✓	
8-7	Amendment to answer filed on behalf of defendants. ✓	
8-7	See No. 7479. (Hearing on motions and trial on merits had).	
8-14	See No. 7479.	
8-14	Defendants' supplemental memorandum filed. ✓	
8-17	Entire record and docket sheet delivered to Judge Dawkins. ✓	
8-19	Post argument supplemental brief filed on behalf of plaintiffs & delivered to Judge Dawkins. Copies thereof mailed to Judges Wisdom & Hunter.	
8-27	Court Reporter's Transcript of 8-7-59, proceedings, filed.	
" 8-5	Brief by plaintiff on hearing for preliminary injunction and in opposition to motion for summary judgment, filed.	
11-9	Opinion (ruling) by Judge Dawkins holding that preliminary injunction prayed for by plaintiffs will be granted, filed. Order of Judge Dawkins in accordance with ruling of this date enjoining & restraining defendants from conducting the proposed hearing in Shreveport, La. wherein Plffs. are accused of depriving others of the right to vote, filed. Copies of both documents mailed to US Attorney and to counsel for plaintiffs.	
11-19	Defendant's notice of Appeal from Judgment of 11-9-59, filed.	
"	Defendants' designation of contents of record on appeal, filed.	



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[fol. 336] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 337] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

District Court Civil Action No. 7480

JOHN A. HANNAH, et al., individually and in their official capacity as members of the Commission on Civil Rights, Appellants,

v.

J. A. H. SLAWSON, et al., Appellees.

MOTION FOR AN ORDER DIRECTING THE CLERK TO TRANSMIT TO THE SUPREME COURT FORTHWITH THE CERTIFIED COPY OF THE RECORD NOW FILED WITH THIS COURT—Filed Nov. 20, 1959.

Appellants herein respectfully move this Court for an order directing the Clerk to transmit to the Supreme Court forthwith the certified copy of the record now filed with this court. In support of this motion, appellants show as follows:

This action originated in the District Court for the Western District of Louisiana as a suit (Civil Action No. 7480) to enjoin a hearing scheduled by the Commission on Civil Rights, a temporary agency of the United States created by the Civil Rights Act of 1957, 42 U. S. C. Section 1975 et seq.[1] Plaintiffs in this action (appellees here) are individual citizens of Louisiana, who had been subpoenaed to appear at the hearing. The action was filed simultaneously with the case of *Larche, et. al.* v. *Hannah, et. al.*

---

[1] Section (A) (1) of The Civil Rights Act, 42 U. S. C. § 1975 (a) (1), authorizes the Commission to investigate allegations in writing, under oath or affirmation, that certain citizens are being deprived of the right to vote on account of race or color.

(Civil Action No. 7479, W.D. La.), a suit by Registrars of Voters for certain parishes in Louisiana seeking the same relief. In both cases the plaintiffs claimed that the Commission's rules and procedures, which do not provide for apprisal, confrontation or cross-examination, are illegal. [fol. 338] Because the complaint in *Larche*, unlike the complaint in the instant case, challenged the constitutionality of the Act creating the Commission on the ground that it did not constitute "appropriate legislation" within the meaning of the Fifteenth Amendment to the Constitution of the United States, a three-judge court was there convened pursuant to 28 U.S.C. Section 2282. In an opinion in the *Larche* case, filed October 7, 1959, the three-judge court, Judge Wisdom dissenting, ruled that although the Act was constitutional, the foregoing rules and procedures of the Commission were unauthorized by statute. In an Order dated November 9, 1959, the Commission was enjoined from conducting hearings in Louisiana under the challenged rules and procedures. In the instant case an identical Order, from which this appeal is taken, was entered on November 9, 1959, by Judge Dawkins, Jr.[2]

Appellants have filed a Notice of Appeal to the Supreme Court from the *Larche* Order, which is appealable directly to the Supreme Court under 28 U.S.C. Section 1253. Because of the Commission's limited life, and the consequent importance of obtaining a Supreme Court determination on the issues involved in *Larche* with minimum delay, appellants intend to do everything possible to expedite that appeal, including the filing of a Motion to advance the case on the Supreme Court Calendar.[3] If the Supreme

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[2] Although Judge Dawkins' order is unrestricted in terms, it appears to be a preliminary, not a final, injunction. He so designated it in a "Ruling", filed on the same day as the order, in which he referred to the opinion of the three-judge court in *Larche* as the basis for his decision. Even if the order is a preliminary injunction, however, it is appealable to this court under 28 U.S.C. § 1292.

[3] Considerable delay has already been incurred in the *Larche* case by the lapse of more than one month between the entry of the opinion of the three-judge court and entry of its order granting the injunction.

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Court, however, upon an expedited appeal, should reverse the judgment in *Larche*, such reversal might still leave outstanding the judgment in the instant case, if the instant case were to take a normal appellate route. Because the issues in the two cases are substantially identical,[4] there is every reason for the Supreme Court to hear and decide [fol. 339] them at the same time. Thus, we intend to file with the Supreme Court, at the same time as we file our Jurisdictional Statement in *Larche*, a petition in the instant case for certiorari before judgment, pursuant to Rule 20 of the Revised Rules of the Supreme Court, 28 U. S. C. If the petition should be granted, the record would be brought up to the Supreme Court from this court.

The Supreme Court cannot act upon the petition for certiorari unless the record is filed in that Court. The objective of this motion is to enable us to file with the Supreme Court the certified copy of the record, now filed in this Court.[5]

Conclusion

Wherefore appellants pray that this Court enter an order directing the Clerk to transmit to the Supreme Court forthwith the certified copy of the record now filed with this Court.

/s/ Joseph M. F. Ryan, Jr., Acting Assistant Attorney General, Civil Rights Division. T. Fitzhugh Wilson, United States Attorney, Western District of Louisiana.

[fol. 340] Certificate of Service Omitted in Printing

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[4] As we have stated in ftn. 2, *supra*, Judge Dawkins used the opinion of the three-judge court, of which he was a member, as the basis of his decision in the instant case. The rationale of both decisions, therefore, is the holding that Congress did not authorize the Commission to hold hearings without providing for apprisal, confrontation and cross-examination.

[5] Our notice of appeal was filed in this case on November 19, 1959. The record was filed in this Court on November 20, 1959.

[fol. 341] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18,097

JOHN A. HANNAH, et al, individually and in their official capacity as members of the Commission on Civil Rights, Appellants,

v.

J. A. H. SLAWSON, et al, Appellees

Appeal from the United States District Court for the Western District of Louisiana

ORDER DIRECTING TRANSMITTAL OF ORIGINAL RECORD AND GRANTING STAY—NOV. 21, 1959

On consideration of the motion filed by appellants for an order directing the Clerk of this Court to transmit to the Supreme Court of the United States forthwith the certified copy of the record on appeal filed this date in the above numbered and entitled cause.

It is ordered that such motion be, and the same is hereby granted. Further proceedings in this appeal are hereby stayed pending the Supreme Court's disposition of appellants' application for writ of certiorari, and in the event certiorari is granted, until final termination of this cause in the Supreme Court of the United States. In the event certiorari is denied, the certified copy of the typewritten transcript of record with proceedings had in this Court appended thereto, is to be returned to the custody of the Clerk of this Court.

/s/ Richard T. Rives, Chief Judge, U.S. Court of Appeals.

November 21, 1959.

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[fol. 342] UNITED STATES OF AMERICA, UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

CLERK'S CERTIFICATE

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 337 to 341, next preceding this certificate are true copies of the proceedings had in this Court in a certain cause, numbered 18097, wherein John A. Hannah, et al, individually and in their official capacity as members of the Commission on Civil Rights, are appellants, and J. A. H. Slawson, et al, are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages numbered from 1 to 336 is the certified transcript of record filed by the Clerk of the United States District Court for the Western District of Louisiana.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 21st day of November, A. D., 1959.

Edward W. Wadsworth, Clerk, United States Court of Appeals for the Fifth Circuit.

[fol. 343] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1959

Nos. 549 and 550

JOHN A. HANNAH, et al, Appellants,

vs.

MARGARET M. LARCHE, et al; and JOHN A. HANNAH, et al, Petitioners

vs.

J. A. H. SLAWSON, et al.

RULING ON MOTION TO ADVANCE—December 7, 1959

Upon Consideration of the motion to advance filed by the Solicitor General wherein he states that his brief on the merits will be filed on or before December 15, 1959, the Court directs that on or before Wednesday, January 13, 1960, the appellees shall file any motion or motions responsive to the statement as to jurisdiction and on the merits of the case, the respondents shall file any brief relating to the granting or denying of the petition for writ of certiorari and on the merits of the case, and the cases are set for oral argument on Monday, January 18, 1960, on the petition for writ of certiorari, the jurisdiction on appeal, and on the merits of the cases.

The cases are consolidated for the purpose of this argument and a total of four hours is allowed.

December 7, 1959

☆ U. S. GOVERNMENT PRINTING OFFICE: 1959 [illegible]

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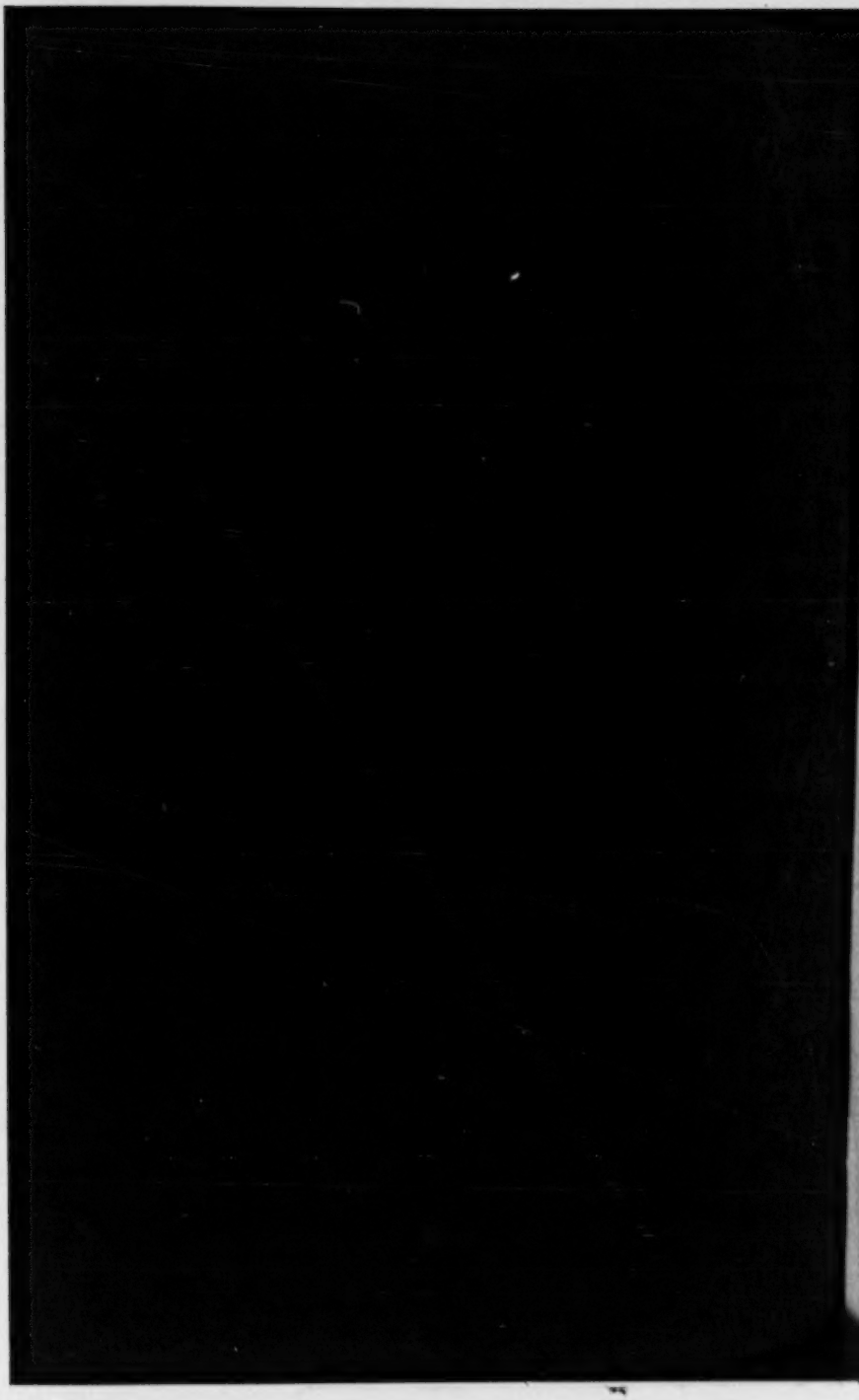

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. ——

JOHN A. HANNAH, ET AL., PETITIONERS

v.

J. A. H. SLAWSON, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of petitioners, respectfully prays that a writ of certiorari issue in this case to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Louisiana (Appendix B, *infra*, p. 8) is not reported.[1] The Court of Appeals for the Fifth Circuit has rendered no judgment or opinion.

[1] The opinion incorporates by reference an opinion of the three-judge District Court in *Larche* v. *Hannah*, a companion case. The opinion in *Larche* is contained in Appendix C, pp. 9–43, *infra*.

JURISDICTION

The judgment of the District Court (Appendix A, *infra,* p. 6) was entered on November 9, 1959. A notice of appeal to the Court of Appeals for the Fifth Circuit was filed on November 19, 1959, and the record on appeal was docketed in that court on November 20, 1959. The case has not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The issue presented is identical to that involved in No. 549, *Hannah* v. *Larche,* except for the fact that the plaintiffs here are private individuals rather than voting registrars.

STATEMENT

On July 10, 1959, respondents, private citizens of Louisiana who had been subpoenaed to appear at a hearing of the Commission on Civil Rights, filed a complaint pursuant to 28 U.S.C. 1331 and 42 U.S.C. 1985 in the District Court for the Western District of Louisiana against petitioners, the members of the Commission on Civil Rights, to enjoin a hearing scheduled to be held in Shreveport, Louisiana, on July 13, 1959. This hearing had been scheduled by the Commission pursuant to the authority contained in section 104(a)(1) of the Civil Rights Act of 1957, 42 U.S.C. 1975c(a)(1), and had as its principal purpose the investigation of written allegations that certain citizens were being deprived of their right to vote on account of race or color.

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Respondents claimed that the Commission was acting illegally in refusing to advise them of the nature of the allegations pursuant to which the hearing had been scheduled and in refusing to allow them to confront and cross-examine the persons making such allegations. The prayer for relief sought a temporary restraining order and a preliminary and permanent injunction.

The District Court issued a temporary restraining order. Thereafter, a combined hearing was had on this case and on *Larche* v. *Hannah*, a companion case,[2] before a three-judge District Court,[3] and on October 7, 1959, the three-judge court entered an opinion holding that the Commission rules and procedures were beyond the authority of the Commission because Congress had not empowered that body to refuse to afford persons "accused" before it the "right of apprisal, confrontation and cross-examination." On November 9, 1959, a ruling was filed in this case by Chief Judge Dawkins, who was also a member of the three-judge court, incorporating by reference the opinion filed in *Larche* v. *Hannah, supra*. On the same day, the District Court entered a preliminary injunction restraining the Commission from holding hearings in Louisiana "wherein the accused are denied the right of apprisal, confrontation and cross-examination."

---

[2] A Jurisdictional Statement in the *Larche* case is being filed herewith.

[3] The complaint in *Larche* challenged the constitutionality of the Civil Rights Act of 1957.

REASONS FOR GRANTING THE WRIT

1. This case presents issues similar to those raised by *Hannah* v. *Larche*, No. ——, now on direct appeal from the District Court for the Western District of Louisiana. In that case a three-judge District Court enjoined the Commission on Civil Rights from holding hearings in the Western District of Louisiana "wherein the accused are not granted the rights of apprisal, confrontation and cross-examination." In this case a single-judge District Court entered an injunction to the same effect. There are two distinctions between the *Larche* case and the instant case: (1) the complaint in *Larche* alleges that the Civil Rights Act of 1957, the statute creating the Commission on Civil Rights, is unconstitutional, whereas the complaint in the instant case contains no such allegation; and (2) the plaintiffs in *Larche* are voting registrars of the State of Louisiana whereas the plaintiffs in the instant case are private individuals. Since the decision enjoining the Commission in the *Larche* case has been brought to this Court by direct appeal under 28 U.S.C. 1253, it is appropriate that the instant decision, raising the same issues on similar facts, be reviewed by this Court at the same time.

2. As pointed out in our Motion to Advance filed in this case and in *Larche*, it is important that the issues in these cases, which cloud the ability of the Commission to hold hearings anywhere in the United States, be resolved expeditiously in order that the Commission may resume the program of investigation with which it was entrusted by the Congress. A reversal by this Court of the *Larche* decision alone

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would not necessarily free the Commission of injunctive restraint since further appellate proceedings in the instant case are conceivable if it is not heard and decided together with the *Larche* case. In this connection, it is pertinent that the Commission on Civil Rights is not a permanent body, but that under 42 U.S.C. 1975c(b), (c), as amended on September 28, 1959 (P.L. 86–383, 73 Stat. 724) its final report must be filed with the President and the Congress not later than September 9, 1961.

Since the issues involved are already before the Court in the *Larche* case, this petition seems an appropriate invocation of certiorari jurisdiction before judgment in the Court of Appeals. Rule 20, Revised Rules of this Court; cf. *White* v. *Mechanics Securities Corp.*, 269 U.S. 283, 299; *Graham & Foster* v. *Goodcell*, 282 U.S. 409, 411–412, 415, note 2; *United States* v. *Bankers Trust Co.*, 294 U.S. 240, 243; *Porter* v. *Dicken*, 328 U.S. 252; *Brown* v. *Board of Education*, 344 U.S. 1, 3; *Reid* v. *Covert*, 354 U.S. 1, 5; *Wilson* v. *Bohlender*, No. 37, this Term.

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari before judgment should be granted.

J. LEE RANKIN,
Solicitor General.

JOSEPH M. F. RYAN, JR.,
Acting Assistant Attorney General.

HAROLD H. GREENE,
LAWRENCE J. LEE,
Attorneys.

NOVEMBER 1959.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

CIVIL ACTION
No. 7480

Filed November 1959.

J. A. N. SLAWSON, ET ALS.

v.

JOHN A. HANNAH, ET ALS.

BEN C. DAWKINS, JR., *Chief Judge.*

ORDER

For the reasons assigned in the majority opinion in Civil Action No. 7479, entitled "Mrs. Margaret M. Larche, et als, vs. John A. Hannah, et als", dated October 6th, 1959, copy of which is annexed hereto and made a part hereof by reference,

It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiffs, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

This injunction does not prohibit all hearings pursuant to Public Law 85–315, 85th Congress, 42 U.S.C.A. 1975, et seq., but only those hearings proposed to be

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held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

Thus done and signed in Chambers on this the 9th day of November 1959.

(S) BEN C. DAWKINS, JR.,
United States District Judge.

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

CIVIL ACTION
No. 7480

Filed November 1959.

J. A. H. SLAWSON, ET ALS

v.

JOHN A. HANNAH, ET ALS

BEN C. DAWKINS, JR., *Chief Judge.*

RULING

For the reasons assigned in the majority opinion in Civil Action No. 7479, entitled "Mrs. Margaret M. Larche, et als, vs. John A. Hannah, et als", dated October 6th, 1959, copy of which is annexed hereto and made a part hereof by reference,

The preliminary injunction prayed for by plaintiffs will be granted.

Thus done and signed in Chambers on this 9th day of November, 1959.

/S/ BEN C. DAWKINS, JR.,
United States District Judge.

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

CIVIL ACTION No. 7479

Filed October 7, 1959.

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

THREE-JUDGE COURT

Judge John Minor Wisdom, Circuit Judge.
Judge Ben C. Dawkins, Jr., Chief Judge.
Judge Edwin F. Hunter, Jr., District Judge.

HUNTER, *Judge:*

This case originated in the Shreveport Division of the Western District of Louisiana upon the filing of a complaint on July 10, 1959. Plaintiffs are registrars of voters in and for certain parishes in Louisiana.[1] The Commission on Civil Rights is a temporary agency of the United States, created by the

[1] Hereinafter referred to as "Registrars".

Civil Rights Act of 1957, under Public Law 85–315, 85th Congress, U.S.C.A. 42:1975, et seq. The Commission scheduled a hearing for July 13, 1959, in Shreveport, Louisiana, for the purpose of investigating allegations in writing (under oath or affirmation) that certain citizens were being deprived of their right to vote on account of race or color.[2] These allegations accuse the registrars, through their officials acts, of having caused such deprivation, and summoned them to appear before the Commission. The subpoenas also required the registrars to produce for inspection various voting and registration records within their custody and control.

The suit is against the Commission and its members. Its declared object is to stay the effectiveness of the Commission subpoenas and subpoenas duces tecum, and to restrain and enjoin the conduct of the proposed hearing. The registrars insist they are entitled to this relief because the Commission is seeking to hold such hearing pursuant to rules of procedure which are ultra vires, and which deny to them traditional procedural safeguards. Moreover, the regis-

[2] Under Section 104(a) of that Act the Commission is empowered and directed to: "(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based; * * *"

The Act also empowers the Commission, or any authorized subcommittee thereof, to hold such public hearings and act at such times and places as the Commission may deem advisable. Said Act also empowers the Commission to require the attendance and testimony of witnesses or the production of written or other matters.

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trars assert that the rules of procedure adopted by the Commission violate their fundamental constitutional rights; and that the Act in its entirety is unconstitutional because it constitutes an unconstitutional delegation of power.[3]

Detailing their complaints, supported by sworn affidavits, the registrars allege that they were served with subpoenas and subpoenas duces tecum issued by the Chairman of the Commission, commanding them to appear and testify before the Commission on July 13, 1959; that they have not been informed of the nature of the compliants against them, nor have they been assured that they will be confronted with the complaining witnesses; that the Commission repeatedly has informed the Attorney General of Louisiana that it would not, under any circumstances, furnish plaintiffs with, or permit them to examine, the written complaints filed against them, nor would it divulge the name or names of the secret complainants; that the rules under which the hearing is to be conducted specifically deny to registrars the right to cross-examine their accusers.[4]

On July 10, 1959 the case was heard by the Honorable Ben C. Dawkins, Jr., Chief Judge of the Western District of Louisiana. The matter was exten-

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[3] Registrars also contend that the procedural provisions of the Administrative Procedure Act should be applied. We cannot agree. The A.P.A. prescribes in section 7 (5 U.S.C. 1006), specific hearing procedures with respect to two processes; in section 4 (5 U.S.C. 1003) with respect to "rule making", and in section 5 (5 U.S.C. 1004) with respect to "adjudications." The Act contains no hearing requirements except where rule making or adjudications are involved. The Civil Rights Commission is performing neither function here.

[4] The truth of these facts is not contested.

sively argued and briefed. On July 12th Judge Dawkins granted a temporary restraining order and issued a rule on the Commission and its members to show cause why an interlocutory injunction should not issue. Judge Dawkins, in issuing the temporary restraining order, did not intimate any opinion as to the constitutionality of the statute itself.[5] This three-judge court was convened to consider the constitutional attack.

The principal object and purpose of a three-judge federal count is to decide the constitutional validity of the Act of Congress sought to be enjoined. But where other issues are presented, as they are here, they too should be decided. The parties readily agree that this is so and that all issues, both constitutional and non-constitutional, are before this court.[6]

THE CONSTITUTIONALITY OF THE ACT ITSELF

Complainants seek a declaratory judgment to the effect that the Act is unconstitutional because it is not appropriate legislation. Manifestly this position cannot be sustained.

The Constitution and pertinent decisions of the Supreme Court make clear that Congress may, pursuant to power conferred upon it by Article 1 of the Constitution, legislate to secure the right to vote in federal elections. That power has been found in Article 1, Section 4. *Ex Parte Siebold,* 100 U.S. 371, 383 (1879); *Ex Parte Yarbrough,* 110 U.S. 651, 660 (1884); *United States* v. *Mosley,* 238 U.S. 383 (1915). It has been found in Article 1, Section 8, Clause 18,

[5] Judge Dawkins' opinion is made a part hereof by reference.

[6] California Water Supply Co. v. Redding, 304 U.S. 252 (1938); Davis v. Wallace, 257 U.S. 478, 482 (1922); Louisville and Nashville RR Co. v. Garrett, 231 U.S. 290, 304 (1913).

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Ex Parte Yarbrough, supra, at page 658. It has been found in Article 1, Section 2, *United States* v. *Classic,* 313 U.S. 299, 316 (1941). And, as the Supreme Court noted in the *Classic* case, *supra,* at page 315:

> "* * * since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of individuals as well as of states."

It is equally clear that Congress may, pursuant to Section 2 of the 15th Amendment, legislate to prevent states and their officials from denying qualified persons the right to vote on account of race, color, or previous condition of servitude (*Guinn* v. *U.S.,* 238 U.S. 347 (1915); *In Re Wallace,* 170 F. Supp. 63 (1959)). Similarly, Congress may, pursuant to Section 5 of the 14th Amendment, legislate to prevent states and their officials from enacting or enforcing statutes which deny equal protection of the laws.

Since Congress may legislate pursuant to its constitutional powers, and since it may investigate those objects upon which it may legislate[7], and since it may delegate its investigative function[8], the issue of the constitutionality of the acts in creating the Commission rests solely on the question of whether the action of Congress was, in fact, an implementation of its constitutional powers. The stated purposes of the act, its fair reading, and its overwhelming legislative history are proof positive that Congress did create the

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[7] Watkins v. U.S., 354 U.S. 178 (1957).

[8] Endicott Johnson Corp. v. Perkins, 317 U.S. 501–510 (1943).

Commission pursuant to its Article 1 power, as well as to its powers under Sections 5 and 2 of the 14th and 15th Amendments[9], respectively.

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[9] (A). From the report of the House of Representatives Judiciary Committee (Report No. 291, 85th Congress, First Session) accompanying the bill which became, in pertinent part, the Civil Rights Act of 1957, it is manifest that Congress was legislating pursuant to its Article 1 power. Thus, that portion of the report designated "General Statement" notes:

The Provisions of the Bill H.R. 6127 are designed to achieve a more effective enforcement of the rights already guaranteed by the Constitution and laws of the United States. This is particularly true with regard to the right of franchise in federal matters. (At page 5.)

Similarly, the "General Statement" portion continues at page 6: With regard to the proposals involving the right to vote, the Federal Government has placed upon it by article 1, section 4, of the Constitution the authority to regulate the manner of conducting elections and that authority is further supplemented by the 14th and 15th Amendments.

There is further evidence that throughout its deliberations Congress was conscious of its Article 1 power. A clear exercise of that power is illustrated by the enactment of the present subsection (b) of section 1971, Title 42. In authorizing the federal government to prevent certain types of conduct by individuals, its terms are carefully limited to federal elections. And, as the House Report, supra, makes clear (at pages 11–13), Congress rooted this provision in its Article 1 power.

Finally, the history of the terms of the Act which prescribe the duties of the Commission reveals that it was created pursuant to the Article 1 power. Section 104(a) directs that the Committee shall:

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote *and have that vote counted* * * *" (Emphasis supplied.)

The underscored language was inserted by the House after the bill came out of Committee. Representative Hoffman, favoring the amendment, regarded its inclusion as crucial since Supreme Court had held it to be an integral part of the right

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We are mindful of the arguments repeatedly appearing in the registrars' brief to the effect that the power granted to Congress to legislate is specifically

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to vote in *United States* v. *Classic*, *supra*, (103 Cong. Rec. App. 4716). Thus, the Commission was directed to investigate deprivations of an aspect of the right to vote which had been enunciated in a case which involved the Article 1 power of Congress.

(B). *The 14th Amendment.* In the House debates Congressman Celler referred to the Act (103 Cong. Rec. 16088) as "* * * clear implementation of the 14th and 15th amendments." Similarly, in the words of the House Report, *supra*, at page 6:

"* * * the 14th amendment operates to prevent any State from enacting or enforcing a law which would abridge the privilege and immunity of a United States citizen and denying such a person the equal protection of the laws. *These two amendments expressly authorize Congress to enforce them by legislation.* (Emphasis supplied.)

"* * * the 14th and 15th amendments, both of which expressly confer upon the Congress the power to enforce them by appropriate regulations. (At page 13.)

Above all, the terms of the Act itself which relate to the Commission on Civil Rights demonstrate conclusively that Congress relied in part upon its powers under section 5 of the Fourteenth Amendment. By section 104(a) the Commission is directed to:

(2) study and collect information concerning legal developments constituting *a denial of equal protection of the laws under the Constitution; and* (emphasis supplied)

(3) appraise the laws and policies of the Federal Government *with respect to equal protection of the laws* under the Constitution. (Emphasis supplied.)

The inclusion by Congress of the underscored language manifests its reliance upon a concept found only in the 14th Amendment.

(C). *The 15th Amendment.* For example, the statement of Senator Bush at 103 Congressional Record, 13138: "That is the

limited by the Tenth Amendment. On its face the Tenth Amendment recognizes that certain powers are prohibited by the Constitution to the states, and therefore are not reserved to the states. One of these prohibitions is that no state may deny equal protection of its laws (14th Amendment). Another is that no state may deny the right to vote on account of race, color, or previous condition of servitude (15th Amendment). Still another provision of the Constitution specifically gives to Congress the Power to legislate to secure the right of qualified electors to vote in federal elections (Article 1, Sec. 2). So, we have here involved the very powers which the Constitution says are not reserved to the states. The action here is not an invasion of state power merely because state voting and registration records are involved. The congressional power is complete in itself and may be exercised to its full extent. The investigation of alleged discriminatory practices is an appropriate step in the process of enforcing and protecting the right of qualified electors[10] to vote. The Act very definitely constitutes appropriate legislation.

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central purpose of this bill: to give meaning to the 15th amendment of the Constitution of the United States." See also the statement of Representative Celler in the House debates at 103 Congressional Record 16088.

[10] Under our constitutional system the qualification of voters is a matter committed to the states, subject to federal constitutional restraints prohibiting discrimination on account of race, color, sex, etc. But it is also true that the right of citizens to cast ballots, and have them counted in congressional elections, *in accordance with applicable state laws*, is a right secured by the federal constitution, and this right, unlike those carried by the 14th and 15th amendments, is secured against the actions of individuals as well as states. Article 1, Section 2 of the Constitution, in its provisions for the election of members of the House of Representatives, and the Seventeenth Amendment, in

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The remaining pertinent and serious questions presented may be thus stated:

> (1) Did Congress, in creating the Commission, specifically authorize it to adopt rules for investigations conducted under Section 104(a)(1) of the Act which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them? [11]

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its provision for the election of Senators, provide that officials will be chosen "by the people". Each provision goes on to state that "the electors in each State shall have the qualifications requisite for Electors of the most numerous branches of the State Legislature." So, while the right of suffrage in federal elections is established in the Constitution, it is subject to the imposition of state standards which are not discriminatory. (Lassiter v. Northampton Election Bd., 360 U.S. 45, decided June 8, 1959.)

[11] Congress authorized the Commission to hold hearings (42 U.S.C. 1975(d)-(f)). Congress enumerated specific mandates with respect to certain less fundamental procedural aspects (42 U.S.C. 1975(a)). Congress did not expressly authorize the Commission to deny to parties investigated the right of apprisal, confrontation, and cross-examination. The Commission assumed that they had the power to so do.

On their own, they adopted a rule denying to the parties investigated the right of cross-examination. The rule is 3(i) and reads as follows:

"Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

When informed that a hearing would be held to investigate charges against them, the registrars requested the right to see the accusations and affidavits filed against them. They also specifically requested the names of their accusers. The Commission refused both requests. The denial in each instance was by resolution (see Stipulation).

(2) If Congress did so authorize the Commission is such authorization constitutionally permissible?

A careful reading of the several opinions in *Groban,*[12] *Anonymous,*[13] and *Greene*[14] convinces us that, as applied to the circumstances of this case, a serious constitutional issue is presented as to whether or not the rules adopted by this Commission, which deprived these plaintiffs of the right of confrontation and cross-examination and the right to be apprised of the complaints against them, are violative of the Constitution. There is no talismanic formula which can be applied. Every term, the Supreme Court examines the particular circumstances of particular cases in order to apply generalities which no one disputes.

Under the rationale of *Greene,* concurred in by eight justices, a decision is not now required on the constitutionality of these deprivations. It is sufficient that we find there to be nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the act authorizing the Commission to deprive these persons of the right of confrontation and cross-examination.

Here, plaintiffs are being subjected to public opprobrium and scorn without fair and adequate opportunity to disprove the accusations against them. They are being subjected to the distinct likelihood of losing

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[12] In Re Groban, 352 U.S. 330, 77 S. Ct. 510, decided February 25, 1957.

[13] Anonymous v. Baker, 360 U.S. 287, June 15, 1959.

[14] Greene v. McElroy, 360 U.S. 474, decided June 29, 1959.

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their jobs. They have been charged with, and are under investigation for, criminal conduct, and are to be examined in connection with offenses constituting federal and state crimes[15] in a hearing which would

[15] The Commission admittedly plans to hold the hearing to investigate written allegations that the registrars deprived certain citizens of their right to vote because of their color, race, religion, or national origin (see Affidavits of Registrars and Stipulation No. 5). Accordingly, it must be admitted that the registrars are being examined in connection with their alleged commission of federal and state crimes, as follows: to-wit:

18 U.S.C.A. 242

"*Deprivation of rights under color of law*"

"Whoever, under color of any law, statute, ordnance, regulation, or custom, wilfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

L.S.A.-R.S. 14:134

"*Malfeasance in office*"

"Malfeasance in office is committed when any public officer or public employee shall:

"(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

"(2) Intentionally perform any such duty in an unlawful manner; or

"(3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

"Whoever commits the crime of malfeasance in office shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both."

completely fail to comport with traditional American ideas of fair play and would violate every element of natural justice.

The hearing sought to be restrained herein has been called pursuant to, and would be conducted in accordance with, rules which deny the right of confrontation. The registrars would be denied the right of cross-examination. They would be denied the right to be apprised of the identity of the person, or persons, making the charges against them, as well as the exact nature of the charge. These denials are the products of administrative decision not explicitly authorized by Congress. When we consider that this executive commission has been granted the right of subpoena to investigate allegations which, if true, would constitute the commission of crimes under state and federal law, and that it is further required to make a report of its findings to the Chief Executive whose duty it is to enforce federal criminal laws [16], we can reach no other conclusion than to say that if ever the traditional procedural safeguards, spoken of in *Greene*, were required to protect appearers before a commission, then this is the instance. There, the Supreme Court, speaking through its Chief Justice, said:

> "Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an*

[16] 42 U.S.C. 1975 (c) (b) requires the Commission to submit to the President a final and comprehensive report of its findings. Since the Commission is required to make this report to the President, the Chief Executive Officer of the land, it is fair to presume that a prime purpose of this report is to secure execution and enforcement of the laws presently in effect.

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opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, e.g., *Mattox* v. *United States,* 156 U.S. 237, 242–244; *Kirby* v. *United States,* 174 U.S. 47; *Notes* v. *United States,* 178 U.S. 458, 474; *In re Oliver,* 333 U.S. 257, 273, but also in all types of cases where administrative and regulatory action were under scrutiny. E.g., *Southern R. Co.* v. *Virginia,* 290 U.S. 190; *Ohio Bell Telephone Co.* v. *Commission,* 301 U.S. 292; *Morgan* v. *United States,* 304 U.S. 1, 19; *Carter* v. *Kubler,* 320 U.S. 243; *Reilly* v. *Pinkus,* 338 U.S. 269. Nor, as it has been pointed out, has Congress ignored these fundamental requirements in enacting regulatory legislation. *Joint Anti-fascist Committee* v. *McGrath,* 341 U.S. 168–169 (underscoring ours).

* * * * *

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., *The Japanese Immigrant Case,* 189 U.S. 86, 101; *Dismuke* v. *United States,* 297 U.S. 167, 172; *Ex parte Endo,* 323 U.S. 283, 299–300; *American Power Co.* v. *Securities and Ex-*

change Comm'n, 329 U.S. 90, 107–108; *Hannegan* v. *Esquire*, 327 U.S. 146, 156; *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 49; Cf. *Anniston Mfg. Co.* v. *Davis*, 301 U.S. 337; *United States* v. *Rumely*, 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

And Mr. Justice Douglas, concurring in *Peters* v. *Hobby*, 349 U.S. 331, says:

"It, therefore, becomes necessary for me to reach the constitutional issue.

"Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under *Corss*-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds, or by people who, though sincere, have poor facilities of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. We have here a system where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast

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> domain. It is used not only to get rid of employees in the Government, but also employees who work for private firms having contracts with the Government. * * * ."

The Supreme Court, in *Greene,* clearly and concisely charted a salutary and sensible course to be followed. Whether the procedures under the circumstances here are constitutionally permissible we do not decide. In accordance with the teachings of *Greene,* we decide only that in a hearing such as the one envisaged here, the Commission had no right to deny the accused Registrars the traditional rights of confrontation and cross-examination in the absence of explicit congressional authorization to do so.

In *Greene* the Supreme Court held these safeguards were not to be denied to one being investigated for alleged communistic associations and sympathies in the absence of explicit authorization from either the President or Congress. Surely, duly chosen state officials are entitled to the same protection, especially since no considerations of national security are involved. So is every citizen. In *Greene,* the government did not take the petitioner's job away from him, but he did lose his job as a result of a government finding to the effect that he was not a good security risk. If the Commission here finds the charges against the registrars are true, they are faced not only with public scorn and possible loss of their jobs, but also with probable indictment, arrest and prosecution.

We are impressed, but not persuaded, by the government's argument that the legislative history of the Act proves that the Commission acted at the implied directed of Congress in adopting the rules here under attack. This argument of implied direc-

tion cannot be sustained in the face of the following language from *Greene:*

> "The issue, as we see it, is whether the Department of Defense has been authorized to create an industrial security clearance program under which affected persons may lose their jobs and may be restrained in following their chosen professions on the basis of fact determinations concerning their fitness for clearance made in proceedings in which they are denied the traditional procedural safeguards of confrontation and cross-examination."
>
> "If acquiescence or implied ratification were enough to show delegation of authority to take actions within the area of questionable constitutionality, we might agree with respondents that delegation has been shown here."
>
> * * * * *
>
> "Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen professions without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use. * * * Such decisions cannot be assumed by acquiescence or nonaction. * * * They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized. * * * but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of

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government, are not endowed with authority to decide them.

"Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process. See, e.g., *The Japanese Immigrant Case,* 189 U.S. 86, 101; *Dismuke* v. *United States,* 297 U.S. 167, 172; *Ex parte Endo,* 323 U.S. 283, 299–300; *American Power Co.* v. *Securities and Exchange Comm'n,* 329 U.S. 90, 107–108; *Hannegan* v. *Esquire,* 327 U.S. 146, 156; *Wong Yang Sung* v. *McGrath,* 339 U.S. 33, 49; C. F. *Anniston Mfg. Co.* v. *Davis,* 301 U.S. 337; *United States* v. *Rumely,* 345 U.S. 41. These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the Constitution presents no inhibition."

Moreover, even if we were to ignore *Greene,* which we have no right to do and certainly will not do, we would still reject the government's argument of implication. The rejection by Congress of more extensive rules is neither explicit nor implied authority be eliminate the fundamental safeguards under the circumstances here present. It is true that Congress refused to explicitly provide the safeguards, but it is equally true that there is nothing in the history of this legislation to show *that Congress even considered writing into the Act any power of the Commission to do away with apprisal, confrontation, and cross-examination.* The silence of Congress was apparently the product of thoughtful compromise. Some members of Congress positively wanted the fundamental safeguards spelled out, while others probably would have approved legislation specifically denying the accused these rights. *Congress remained silent.*

In *Greene* the Court specially found that the Defense Department *had been authorized* to fashion and apply an industrial clearance program but that the Department had not shown that either Congress or the President had *explicitly authorized* proceedings in which the accused was not afforded the safeguards of confrontation and cross-examination. In *Greene* the President, in general terms, had authorized the Department of Defense to create procedures to restrict the dissemination of classified information, and had apparently acquiesced in the elaborate program established by the Secretary of Defense which denied investigated parties of the rights of confrontation and cross-examination. The case for authorization there was stronger than here; e.g., in *Greene,* Part IV, § 2 of Executive Order 9835 specifically stated:

> "* * * the investigative agency may refuse to disclose the names of confidential informants, provided it furnishes sufficient information about such informants on the basis of which the requesting department or agency can make an adequate evaluation of the information furnished by them, and provided it advises the requesting department or agency in writing that it is essential to the protection of the informants or to the investigation of other cases that the identity of the informants not be revealed * * *"

Justice Clark, dissenting, thought the authorization was specific:

> "How the Court can say, despite these facts, that the President had not sufficiently authorized the program is beyond me, unless the Court means that it is necessary for the President to write out the Industrial Security Manual in his own hand."

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The Supreme Court, by an 8–1 majority, rejected the authorization as being insufficient.[17] We are not free to do otherwise here.

The conclusion is inevitable here that the burden is upon the government to show the "explicit action" by Congress authorizing the adoption of the rules which refuse to permit cross-examination, confrontation, and apprisal. In this case the government has made no attempt to point to any "explicit action" of authorization. Congress has made no such authorization, and absent such an explicit authorization, the rules in these particulars are clearly ultra vires.

THE EQUITIES

Proper voting practices are the cornerstone upon which our democratic balance is maintained. Discrimination upsets that balance. Moreover, discrimination clearly violates the Constitution. Steps de-

[17] Equally as decisive on the issue of explicit authorization in areas of doubtful constitutionality is *Kent* v. *Dulles*, 357 U.S. 116. There, Congress had enacted legislation requiring every passport application to "contain a true recital of each and every matter of fact which may be required by any rules" of the Secretary of State, and that requirement had to be satisfied "before a passport is issued to any person." In this context, the Secretary asked for, and petitioners refused to file, the required affidavits stating whether they then were or ever had been members of the Communist party. Thereupon, the Secretary refused to further consider petitioners' application until such time as they filed the required affidavits. The scholars, the courts, the Chief Executive, and the Attorney General all agreed that the issuance of passports had for years been a "discretionary act" on the part of the State Department. The Supreme Court decided that in order for the Secretary to deny a passport to a Communist whose travel abroad would be inimical to our national security, Congress must so provide in explicit terms. The Court once again had construed very narrowly the delegated power to curtail or dilute substantial and fundamental rights.

signed to determine whether there has been discrimination are therefore of grave public interest and importance. When there are charges, as there are here, which state that by one means or another the vote is being denied to a qualified person, the public interest will be served by learning all the facts. Certainly, the surest way of finding out all the facts is to hear from everybody, and the surest test of a witness's veracity is his confrontation and cross-examination.

Government counsel seem to say in their briefs that their investigation is so very important that this Court should not hold that the traditional safeguards should be afforded the registrars. We in no way disagree with counsel for the government concering the value they place on the precious right to vote. But search as we have, we find nothing inimical to the government's interest in giving to the registrars the rights they insist upon here. The ultimate goal of Congress in creating the Commission was to find out all of the facts—the truth, not just possibly prejudiced opinion—so as to be able to safeguard the free exercise of the voting right, subject to the legitimate power of the state to prescribe non-discriminatory and fair voting qualifications. Often in cases of this nature the Court must balance between individual and governmental interests. Here, we examine the record for that purpose and find no conflict. No better procedure exists for finding out the truth than to give the accused notice of the case against him and full opportunity to meet it. Hearings so conducted generate a feeling, so vital in a popular government, that justice is being done.

We have dealt at length with the immediate and irreparable damage that would be caused the registrars by forcing them to proceed without giving them their basic and traditional rights. No good purpose would

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be served by reviewing that phase of the case. Suffice it to say that we stand on what we have said and we agree with Judge Dawkins' original opinion—that these registrars are faced with immediate and irreparable injury. What damage, what injury, will the Commission suffer by giving to these registrars their traditional safeguards of due process of law, and by affording them the tenets of natural justice? In our humble opinion, all the Commission will suffer is perhaps a little inconvenience. It may take them three days rather than one to get the facts. How best can they perform the major task of "finding out all the facts" than to give the persons investigated the basic legal safeguards. We have searched in vain throughout the extensive briefs filed by the government in an effort to find out what irreparable damage, or what damage at all, could be done the Commission by prohibiting them from holding a hearing pursuant to these "ultra vires" rules and resolutions.

We do find in various parts of the government's briefs several statements or intimations as to damage. It was suggested that irreparable damage will be suffered because the Commission will expire in November. The recent action of Congress in extending the life of the Commission dispels this argument.

The government also suggests that if copies of the accusations and the names of the accusers were furnished the registrars it might result in the accusers being prosecuted for perjury. That is a strong argument—if one person makes a written allegation under oath that another has committed a crime and this oath turns out to be untrue, the public interest does not require that the government protect the perjurer. The government also argues that the Court should take judicial notice of the possible pressure to which persons making complaints in this field are subject under

present circumstances. This Court does not know of a single instance where any such pressure has actually been brought. Some honest, sincere, and well-meaning people really believe this, but we are not going to assume (in the total absence of evidence) that the people of this State will be guilty of such a practice. Finally, the government argues that there is no point in telling these people what they did because they are the registrars and they *know* what they did. This contention assumes the registrars' guilt, an assumption which itself does violence to the American concept of justice—that all persons accused of crime are presumed to be innocent until proven guilty by competent evidence.

Insofar as the right to cross-examination is concerned, the government offers no reason why this should be denied. They merely say that they do not have to give it because congressional committees do not, and that Congress did not intend them to do it.

The Commission has authority to hold public hearings on vital public issues. Knowledge and understanding of every element of the problem will give greater clarity and perspective to oneo of the most difficult questions facing our country. Such a study, such an investigation, fairly conducted, will tend to unite responsible people in a common effort to solve these problems. Investigation and hearings will bring into proper focus the areas of responsibility of the federal government and of the states under our constitutional system. Through greater public understanding, therefore, the Commission may chart a course of progress to guide us in the years ahead, but a fact finding investigation conducted as this one is proposed to be conducted can result only in misunderstanding, suspicion, hostility, and unneeded bitterness.

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Natural justice would not require confrontation, apprisal, and cross-examination in every hearing of the Commission, but only in instances where, as here, the record makes it abundantly clear that those being investigated are accused and suspected of criminal conduct.

Believing as we do that the procedures and the rules of the Commission in the particulars heretofore discussed are ultra vires and threaten the registrars with immediate and irreparable damage, and believing further that the interests of the government, the public, and the Commission will best be served by the holding of a full and fair hearing wherein all accused of crimes are given a fair chance to develop all the facts, we have but one course to take—that is to dismiss the government's motion for summary judgment and grant the prayer for an injunction, in accordance with this opinion.

It is so ordered on this the 6th day of October, 1959.

JOHN MINOR WISDOM, *Circuit Judge* (dissenting).

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL., INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7479

Filed October 7, 1959.

WISDOM, Dissenting:

I concur in the holding that the Act is constitutional and that the Administrative Procedure Act is inapplicable. I feel compelled, however, to dissent

from the holding that under Greene v. McElroy the rules of the Commission are ultra vires.

I

The Commission's rules may be inadequate, in terms of traditional safeguards accorded a defendant in a criminal trial, but they are the rules Congress authorized for hearings by the Civil Rights Commission.

This case differs radically from Greene v. McElroy. Here, Congress took pains to set out in the Act, in its delegation of authority, mandatory rules of procedure to be followed by the Commission. The Commission's rules follow the language of the statute or are based on the intent of the statute.[1] Thus, on the important issue of the right of cross-examination, the Commission rule provides: "Interrogation of witnesses at hearings shall be conducted only by authorized staff personnel[2]." This is based on the statutory provision, Section 102(c): "Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights." The limitation of the activities of a lawyer to giving advice to his client, is just a way of saying that the lawyer (or his client) cannot cross-examine an adverse witness.

A central issue in the controversy over civil rights legislation was whether witnesses should have the traditional safeguards of notice, confrontation, and cross-examination. The 1956 Civil Rights Bill, H.R. 627, as reported by the House Judiciary Committee, contained no special rules of procedure. H. Rep. No. 2187, 84 Cong. 2d Sess. It was amended on the floor of the House by the addition of elaborate safeguards which Representative Dies of Texas proposed. 102 Cong. Rec. 13542, 13548. This amendment required

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notice of the subject of the inquiry and confrontation, and allowed limited cross-examination. The bill passed the House, but no action was taken on it in the Senate. In 1957 several bills were introduced containing the same procedural provisions as the 1956 bill, as amended. One of these was S. 83, the subject of Senate hearings in 1957.[3] The position of the Department of Justice, as stated by the Attorney General, was that "it would be a mistake to make it the vehicle for experimenting with new rules". Hearings, Senate Judiciary Committee, 85 Cong., 1st Sess., p. 14. In the House hearings on the 1957 Civil Rights proposal Senator, then Representative, Keating asked Attorney General Brownell if the Department would object to the Committee inserting in the bill a provision "similar to those set up in the rules of the House for the conduct of congressional committees". General Brownell stated that the Department had no objection to such rules of procedure. H.R. 6127, adopted into law as the Civil Rights Act of 1957, incorporated the House "Fair Play Rules"[4] as Section 102 of the Act.[5]

The action of Congress in refusing to adopt a particular bill and adoption of another bill is often an unreliable guide to congressional intent. But the circumstances in which H.R. 6127 became law, rather than S. 83 or H.R. 627, make it clear that Congress, after careful deliberation, made a choice of procedures. Congress rejected the traditional safeguards accorded a defendant in a criminal trial and accepted the House "Fair Play Rules".

The House "Fair Play Rules" were drawn for the conduct of congressional investigating committees. They were the indirect product of innumerable legal articles, judicial dicta, and editorials.[6] They were the

direct product of careful study.[1] It is safe to say that when the House "Fair Play Rules" were adopted as Section 102 of the Civil Rights Act of 1957 every member of the House and Senate regarded that action as an explicit declaration that Congress affirmatively rejected rules extending to witnesses the rights of notice, confrontation, and cross-examination; that, instead, Congress authorized and directed the Civil Rights Commission to follow its more limited "Fair Play Rules".

This background distinguishes the case from Greene v. McElroy. There, the majority's reasoning was the President and Congress would not have delegated to the Department of Defense the power to deprive a man of his job as a result of a hearing in which he has no right of confrontation or cross-examination, without including in the delegation express authorization to by-pass the traditional due process safeguards. Here, Congress expressly authorized the by-pass.

II

I therefore reach the issue of the constitutionality of the procedure.

A hearing subjecting a subpoenaed witness to public opprobrium, loss of reputation, loss of a job, and possible state and federal prosecution based on testimony brought out at the hearing, carries sanctions no less severe than a criminal trial. Fundamental fairness would seem to require that such a witness have the opportunity to assert the rights of notice, confrontation, cross-examination, and other due process safeguards. No court however has gone that far.

Mr. Justice Clark, the only member of the Supreme Court who reached the constitutional issue in Greene, stated: "(T)he Court has long ago and repeatedly

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approved administrative action where the right of cross-examination and confrontation were not permitted." Without exception, the courts have drawn a distinction between investigative and adjudicative proceedings. Witnesses in investigative hearings do not have the constitutional rights of a witness in an adjudicative hearing. The Fifth Amendment gives a witness protection in an investigation; the opportunity to assert all due process rights in any later adjudicative proceeding is a sufficient protection.[8] In re Groban, 1957, 352 U.S. 330, 77 S. Ct. 510, 1 L. ED. 2d 376; Bowles v. Baer, 7 Cir., 1954, 142 F. 2d 787. Norwegian Nitrogen Prod. Co. v. United States, 1932, 288 U.S. 294, 53 S. Ct. 350, 77 L. Ed. 796.

In Groban a majority of the Supreme Court went very far indeed in denying the right to counsel. An Ohio statute, authorizing the State Fire Marshall to investigate the cause of fires, conferred broad powers on the investigating officer. He could hold the investigation in private, exclude counsel, punish witnesses who refuse to testify by summarily committing them to jail, and, if he believed the evidence would warrant a conviction for arson or a similar crime, he could arrest the witness after the investigation. The appellants, who were called upon to testify concerning the cause of a fire at their place of business, refused to testify in the absence of counsel. They were committed to jail. In a habeas corpus proceeding, they contended that they had a constitutional right to counsel under the due process clause of the Fourteenth amendment. The court held, five to four, that appellants had no constitutional right to counsel in giving testimony before an investigative body that does not adjudicate legal rights and responsibilities. If Groban was not entitled to due

process, no witness is entitled to due process in an investigation.

Taking the law as it is, the Commission's rules are constitutional.

III

The rub in this case comes from the Act itself. It comes from the incongruity of a legislative commission of inquiry investigating specific complaints against individuals accused of crimes.[9] To my mind, the creation of such a commission is of questionable legislative propriety, at best. It carries grave danger of legislative usurpation, at worst.

The investigation of specific violations of the law is for grand juries, not legislative commissions. With all deference to Congress, a commission, constituted to investigate a broad problem of national interest, has no business holding hearings that must inevitably develop into legislative trials of individuals. When a subpoened witness accused of a crime may be subjected to trial by exposure, a fact-finding determination and punishment, he should have the same rights of notice, confrontation, and cross-examination, and all the other hard-earned rights emboided in due process, that any one accused of breaking the law is entitled to when he is tried by a jury before a judge. The Commission does not formally adjudicate guilt or impose a formal sentence, but an individual against whom a complaint is made to the Commission may be exposed to all the hardships of a trial and to punishment in many forms.

The House "Fair Play Rules" are a step in the proper direction—for congressional committees. Procedures suitable for Congress' own committees, however, are less than adequate for a trial by an autonomous

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commission to which Congress has delegated its power of inquiry.

The high purposes animating the creation of the Civil Rights Commission do not diminish the inherent dangers in legislative trials. They simply obscure the dangerous means used to attain the ends of the legislation.

These, however, are considerations for Congress.[10] On the law, unless the minority view in Groban should prevail, the Act is constitutional, the rules authorized.

MRS. MARGARET M. LARCHE, ET AL, IN THEIR INDIVIDUAL CAPACITIES AND AS REGISTRARS OF VOTERS IN AND FOR THEIR PARISHES OF THE STATE OF LOUISIANA

v.

JOHN A. HANNAH, ET AL, INDIVIDUALLY AND AS MEMBERS OF THE COMMISSION ON CIVIL RIGHTS

No. 7479

Footnotes

[1] See Appendix A and Appendix B.

[2] This is the rule universally followed by committees of the House and Senate. It permits a form of cross-examination; submission of written questions to be put to the witness by the Chairman—for whatever that is worth as cross-examination.

[3] See Appendix C.

[4] Amendment to Rule XI (25) of the Rules of the House of Representatives. Adopted March 23, 1955, 101 Cong. Rec. 3569–85; House Resolution 151, Rules and Manual, United States House of Representatives, 1959, section 735(i)–(q).

[5] Section 102(a) through 102(i) of the statute is identical with the House "Fair Play Rules".

[6] For a discussion of the various proposals for a code of procedure before congressional committees, see Maslow, Fair Procedures in Congressional Investigations: A Proposed Code, 54 Cal. L. Rev. 839 (1954). For the code proposed by the Amer-

ican Bar Association, see 40 Am. Bar Ass'n Journ. 900 (1954). See the following, some before and some after adoption of the Fair Play Rules, some dealing directly with the procedure before congressional committees and some dealing with the rights of witnesses generally in hearings before investigative or administrative bodies; Landis, Constitutional Limitations on the Congressional Power of Investigation, 40 Harv. L. Rev. 1953 (1926); Potts, Power of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. Rev. 691 (1926); Herweitz and Mulligan, The Legislative Investigating Committee, 33 Cal. L. Rev. 1 (1933); Morgan, Congressional Investigations and Judicial Review; Kilbourn & Thompson Revisited, 37 Cal L. Rev. 556 (1949); Davis, The Requirement of Opportunity to be Heard in the Administrative Process, 51 Yale L. Journ. 1091 (1942); Liacos, Rights of Witnesses Before Congressional Committees, 33 Bos. U. L. Rev. 337 (1953); Symposium on Legislative Investigations: Safeguards of Witnesses, 29 Notre Dame Law, 157 (1954); Keating, The Investigating Power of Congress, 14 Fed. Bar Journ. 171 (1954); Kefauver, A Code of Conduct for Congressional Investigations, 8 Ark. L. Rev. 369 (1954); Chase, Improving Congressional Investigations, 30 Temp. L.Q. 126 (1957); Davis, Requirements of a Trial-Type Hearing, 70 Harv. L. Rev. 193 (1956); McKay, The Right of Confrontation, Wash. U. L.Q. 122 (1959). See the following recent notes and comments: Due Process and the Right to Counsel, 33 St. John's L. Rev. 67 (1957); The Civil Rights Act of 1957 and Contempt of Court, 48 Cornell L.Q. 661 (1958); Constitutional Limitations on the Legislative Power of Investigations, 7 Buffalo L. Rev. 267 (1958); Representation by Counsel, 58 Cal. L. Rev. 395 (1958). See also Barth, Government by Investigation (Viking Press. N.Y. 1955) and Taylor, Grand Inquest (Simon & Schuster, N.Y. 1955).

[7] In 1954 both houses of Congress held extensive hearings on the matter of committee procedures. Hearings before the Subcommittee on Legislative Procedure of the House Rules Committee, Legislative Procedure, 83d Cong. 2d Sess. (1954); Hearings before the Subcommittee on Rules of the Senate Rules and Administration Committee, Rules of Procedure for Senate Investigating Committees, 83d Cong., 2d Sess. (1954). See also Report of Senate Committee on Rules and Administration to

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accompany S. Res. 17, Rules of Procedure for Senate Investigating Committees, 84th Cong., 1955.

[8] Proponents of the legislation emphasized repeatedly; "The Commission created by the proposal is purely investigatory and empowered only to make recommendations". H. Rep. No. 291, 85th Cong. 1st Sess., p. 6.

[9] Section 104(a)(1) of the Act (Duties of the Commission) provides: "The Commission shall—(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;"

[10] The inclusion in the body of the statute of mandatory rules of procedure is unique in legislation setting up an investigatory commission. This, and the provision requiring application to a court for enforcement of process indicate congressional sensitivity to the problem.

APPENDIX A

RULES OF PROCEDURE OF THE COMMISSION

SEC. 102. (a) The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

(b) A copy of the Commission's rules shall be made available to the witness before the Commission.

(c) Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

(d) The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpoena additional witnesses.

(f) Except as provided in sections 102 and 105 (f) of this

Act, the Chairman shall receive and the Commission shall dispose of requests to subpoena additional witnesses.

(g) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive sesssion shall be fined not more than $1,000, or imprisoned for not more than one year.

(h) In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

(i) Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

APPENDIX B

In addition to these statutory provisions, the Commission has adopted the following supplementary Rules of Procedure:

(a) All the provisions of Section 102 of Public Law 85–315, incorporated in Rule 2 above, shall be applicable to and govern the proceedings of all subcommittees appointed by the Com-

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mission pursuant to Section 105(f) of Public Law 85–315, incorporated in Rule 1 above.

(b) At least two members of the Commission must be present at any hearing of the Commission of any sub-committee thereof.

(c) The holding of hearings by the Commission or the appointment of a subcommittee to hold hearings pursuant to the Provisions in Rule 1 above must be approved by a majority of the members of the Commission or by a majority of the members present at which at least a quorum of four members is present.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over the signature of the Chairman of the Commission by the Chairman or by the Chairman upon the request of a member of the Commission.

(e) Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued over signature of the Chairman of a subcommittee appointed pursuant to the provisions of Rule 1 above by the Chairman or by the Chairman upon the request of a member of the subcommittee.

(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2(i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof.

(g) Any witness desiring to read a prepared statement in a hearing shall file a copy with the Commission or sub-committee 24 hours in advance. The Commission or subcommittee shall decide whether to permit the reading of such statement.

(h) The Commission or subcommittee shall decide whether written statements or documents submitted to it shall be placed in the record of the hearing.

(i) Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel.

(j) If the Commission pursuant to Rule 2(e) or any subcommittee thereof, determines that evidence or testimony at

any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf.

(k) Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearing if he objects on the ground of distraction, harassment, or physical handicap.

APPENDIX C (S. 83)

RIGHTS OF PERSONS ADVERSELY AFFECTED BY TESTIMONY

* * * * *

(q) a person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that; (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the *charcter* or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right; (i) to appear and testify or file a sworn statement in his own

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behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v), subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place and under the same circumstances as the hearing at which adverse testimony was presented.

Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence *or* or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.

U.S. GOVERNMENT PRINTING OFFICE: 1959

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FILED
JAN 8 1960
JAMES R. BROWNING, C

No. 550

Supreme Court of the United States

OCTOBER TERM, 1959

JOHN A. HANNAH, ET AL,

Petitioners

vs.

J. A. H. SLAWSON, ET AL,

Respondents

On Petition For a Writ of Certiorari to the
United States Court of Appeals
For the Fifth Circuit

BRIEF FOR THE RESPONDENTS

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Crimes and Criminal Procedure — Civil Rights, 18 U.S.C. 241 et seq:

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BRIEF FOR THE RESPONDENTS

OPINION BELOW

The opinion of the United States District Court for the Western District of Louisiana is not yet reported. A previous opinion of the district court granting a temporary restraining order to respondents has been reported at 176 F. Supp. 791.

JURISDICTION

The notice of appeal to the Court of Appeals, Fifth Circuit, was filed November 19, 1959. The case was docketed on November 20, 1959. No further action has been taken in that Court. On November 27, 1959, the petition for a writ of certiorari prior to judgment was filed herein. Jurisdiction for this proceedings rests upon 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

The Civil Rights Commission is an agency of the *executive* branch of the Government created by Public Law 315 of the 85th Congress. The act directs the Commission to "investigate allegations in writing under oath . . . that certain citizens . . . are being deprived of their right to vote and have that vote counted by reason of their color, race, religion or national origin; which writings . . . shall set forth the facts upon which such belief or beliefs are based." The Commission is further directed to "submit interim reports to the President and the Congress . . . and a final comprehensive report of its ACTIVITIES, FINDINGS and RECOMMENDATIONS . . . " (Emphasis ours).

This Court must decide (1) whether this executive agency has been authorized by Congress to summon before it public officials and private citizens, who have been secretly charged with violating criminal and civil laws, and require them to testify upon such secret accusations, without according them the traditional safeguards of due

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process — such as notification of the charges and confrontation and cross-examination of their accusers, and (2) can such authority be granted to an executive or administrative tribunal without violating the guarantees of the Constitution of the United States.

STATUTES INVOLVED

The Civil Rights Act of 1957 (71 Stat. 634, 42 U.S.C. 1975, et seq):

> Sec. 101 (42 U.S.C. 1975). Commission on Civil Rights.
>
> (a) Establishment.
>
> There is created in the EXECUTIVE branch of the Government a Commission on Civil Rights (hereinafter called the "Commission")
>
> (Emphasis ours)
>
> * * *
>
> Sec. 104 (42 U.S.C. 1975c). Duties; Reports; Termination.
>
> (a) The Commission shall—
>
> (1) Investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writings, under oath or affirmation shall set forth the facts upon which such beliefs are based;
>
> * * *

(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957.

* * *

The Administrative Procedure Act (60 Stat. 237, 5 U.S.C. 1001, et seq.)

Sec. 2 (5 U.S.C. 1001)

(a) "Agency" means each authority (whether or not within or subject to review by another agency) of the Government of the United States other than Congress, the courts, or the Government of possessions, Territories or the District of Columbia.

(d) Order and Adjudication.
"Order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency in any matter other than rule making but including licensing. *"Adjudication" means agency process for the formulation of on order.* (Emphasis ours)

Sec. 5 (5 U.S.C. 1004)

Adjudications.

In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing . . .

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(a) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted.

Sec. 7 (5 U.S.C. 1006)

Hearings; Presiding Officers; Powers and Duties; Burden of Proof; Evidence; Record as Basis For Decision.

In hearings which Section 1003 and 1004 of this title require to be conducted pursuant to this section.

* * *

(c) . . . . Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

* * *

The Civil Rights Act of 1871 (R.S. §1979, 42 U.S.C. 1983 et seq.)

Sec. 1

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

Sec. 2. (42 U.S.C. 1985)

* * *

(3) If two or more persons . . . conspire to prevent . . . any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, . . . or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is . . . deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages . . . against any one or more of the conspirators.

Sec. 6 (42 U.S.C. 1986)

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so, . . . shall be liable to the party injured or his legal representatives, for all damages . . . .

* * *

Crimes and Criminal Procedure — Civil Rights (18 U.S.C. 241 et seq.)

18 U.S.C. 241

If two or more persons conspire to . . . intimidate any citizen in the free exercise or enjoyment of any right or privilege secured him by the Constitution or laws of the United States . . . .

* * *

They shall be fined not more than $5,000.00 or imprisoned not more than ten years or both.

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18 U.S.C. 242

Whoever, under color of law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . on account of . . . his color, or race . . . shall be fined not more than $1,000.00 or imprisoned not more than 1 year, or both.

SUMMARY OF ARGUMENT

Having found that the rules of procedure promulgated by the Civil Rights Commission denied appellees the traditional safeguards of "due process", the District Court enjoined the Commission from holding scheduled hearings on charges that certain Louisiana officials and citizens, including appellees, had deprived other Louisiana citizens of the privilege of voting because of race or color. The rules were declared to be ultra vires and unconstitutional insofar as they deprived the accused complainants of the traditional safeguards of due process, such as notification of the charges and confrontation and cross-examination of their accusers. The Court based its opinion on the lack of "explicit" statutory authority for the adoption of such rules.

The judgment and opinion of the Court below was clearly correct. It is a well established rule of Constitutional Law, that, in such cases, the Court should first examine the authority granted the administrative agency. If explicit authorization is wanting, then grave questions involving the constitutionality of statutes and actions of

the Chief Executive should be avoided. *Greene v. McElroy*, 360 U.S. 474, 79 S. Ct. 1400.

In the instant case no authority was granted to the Commission to adopt rules which would deprive respondents of knowledge of the charges against them, and confrontation and cross-examination of their accusers. The case of *Greene v. McElroy*, supra, clearly sets these forth as minimum requirements of due process for administrative agencies such as the Commission. There is no essential difference between the Greene case and the instant case.

Not only have such powers not been granted by Congress, but it is clear that such authority could not be granted without violating the Bill of Rights of the Constitution of the United States. The guarantees denied to your respondents are the essence of due process and are recognized as immutable principle of our jurisprudence. The Commission's rules violate our fundamental constitutional concepts. (Cf. concurring opinion Mr. Justice Douglas, *Peters v. Hobby*, 349 U.S. 331, 75 S. Ct. 790.)

On the other hand, a study of petitioners' brief shows that it is based upon a number of patently fallacious concepts. These may be briefly summarized as follows:

I.

Petitioners' chief contention is a classical and historical non sequitur dear to the hearts of all bureaucrats. This is the argument that if certain practices are proscribed or prescribed as rules of agency conduct, any-

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thing not specifically prohibited is thereby authorized. Such reasoning permits petitioners to contend that since Congress required some rudimentary safeguards in the Civil Rights Act, it thereby authorized the Commission to deny all other safeguards to parties hailed before it.

II.

Petitioners have erroneously assumed, as a major premise, that the Commission is an arm or appendage of the Congress and, hence, entitled to all of the privileges and powers of a Congressional committee. However, in truth and in fact, it is nothing more or less than an agency of the executive, performing an administrative function and bound by all of the limitations applicable to such agencies.

III.

Petitioners, without reference to any authority — statutory or otherwise, have injected into this case a novel test to determine when an accused is entitled to "due process." It is based upon a spurious definition of the word "adjudicate." No such standard has ever been recognized by this Honorable Court. Moreover, the basis of this proposed test is a misinterpretation of the term "adjudicate" as used in the Administrative Procedure Act.

IV.

Finally, petitioners assert that, in the past, certain executive and/or Congressional agencies have denied due process of law to parties called before them and, imply that the Commission should, therefore, be entitled to de-

prive complainants of these rights. This argument ignores the fact that the legality of the cited actions has never been tested in Courts of the United States, and that some of these agencies were acting under extraordinary powers — such as the War Powers — which are exempt from customary Constitutional restraints.

ARGUMENT

Introduction

A.

No serious discussion of this case could be safely launched without first noticing the bizarre set of facts confronting the Court.

(1) A body set up to protect "civil rights" and euphemistically called a "Civil Rights Commission" has been apprehended in the compromising act of attempting to deny basic "civil rights" to United States citizens.

(2) The red faced Commission vigorously argues that Congress never intended that it accord ordinary "civil rights" to citizens, since its assigned task of protecting "civil rights" is too important to be hampered by such trivia.

(3) A small group of intransigents, each of whom has been charged with being, and roundly denounced as, "anti-Civil Rights," are stubbornly insisting that the "Commission" recognize the basic "civil rights" of "due process" for anyone called before it.

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Certain, it is, that even the most enlightened "TV" or "comic book" fan would find it quite impossible to determine who are the "good guys" and who are the "bad guys" in this puzzling plot. Perhaps, Dr. Gallup will settle this annoying matter by taking a poll on the question, "Should the Civil Rights Commission recognize 'civil rights'?"

This is the seriocomic background of a case that bids fair to set the tone of our liberties for the dawning decade. The light treatment above accorded is not intended as impertinence, but, rather, as contrast, to better point up the gravity of the issues here involved.

B.

It was because of a strong feeling that grave matters of Constitutional Law and high Government policy should be decided promptly and on the essential merits of the case, rather than on technicalities, that respondents joined petitioners in their efforts to bypass the Fifth Circuit Court of Appeals and get this case up for a final decision. The record will verify that there were no objections of a technical nature and that respondents have waived all such objections. They were willing to waive such advantages, because they are firmly convinced that this case is governed by the opinion in Greene, and especially those high principles of human rights and Constitutional liberties enunciated therein.

C.

Because of the previously noted incongruities, this case will long stand as a monumental, if mute, reminder of a sorrowful warning issued by the late, great Mr. Justice Holmes. In a letter to his friend Pollack, he wrote:

> "The whole collective tendency seems to be towards underrating or forgetting the safeguards in bills of rights that had to be fought for in their day and that still are worth fighting for. I have had to deal with cases that made my blood boil and yet seemed to create no feeling in the public or even in most of my brethren. We have been comfortable so long that we are apt to take it for granted that everything will be all right without our taking any trouble. All of which is but a paraphrase of eternal vigilance is the price of freedom . . . ."
>
> Mark DeWolfe Howe, Holmes-Pollack Letters, Vol. 2, p. 25 (1946)

But, if the issue is as simple as it is here pictured, why then is it being so bitterly contested by petitioners? A simple answer readily suggests itself.

Underlying this whole controversy is the white hot dispute over segregation of the races as practiced through the years in certain states in the South. Respondents are well identified as obdurate Southern segregationists. Their views on this great social controversy are not shared by very many, if any, of those before whom they must lay their cause. No doubt, this was counted upon, to weigh heavily in favor of the Commission. On the other hand,

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respondents are satisfied that, regardless of the background, their cause will prevail, because the issue is clear and the cause is just.

Respondents know that however much disagreement may exist on current social problems, there is universal and wholehearted agreement on the age old and fundamental problem of securing the individual's liberty and personal freedom against dictatorial and authoritarian governmental control.

> "He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach to himself."
>
> Thomas Paine, Dissertation on First Principles of Government.

I.

Congress did not authorize the Commission to adopt Rules of Procedure which would deny the accused their Fundamental Safeguards of Due process.

As pointed out in both the majority opinion and the concurring opinion in Greene, cases such as the instant one should be decided upon the narrower ground of "authorization" rather than on the broad and more significant ground of unconstitutionality of statutes and actions of the Chief Executive, where the facts justify such a decision. Certainly this cause falls within this wise judicial policy. Petitioners can not truthfully contend that there has been any "explicit action by law-

makers" empowering the Commission to deny notice of charges, confrontation or cross-examination to accused persons appearing before it. Where no such explicit action has been taken by lawmakers, this Court has repeatedly denied such authority to administrative tribunals.

> "They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized, see Peters v. Hobby, supra, but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators, who, under our system of government, are not endowed with authority to decide them.
>
> "Where administrative action has raised serious constitutional problems, the Court has assumed that Congress or the President intended to afford those affected by the action the traditional safeguards of due process . . . . These cases reflect the Court's concern that traditional forms of fair procedure not be restricted by implication and without the most explicit action by the Nation's lawmakers even in areas where it is possible that the Constitution presents no inhibition." (Greene v. McElroy, 360 U. S. , 79 S. Ct. 1419.)

Acquiescence or implied ratification is not enough.

The salutary rule of the Greene Case is summarized in the following excerpt:

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"Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots . . . . This Court has been zealous to protect these rights from erosion. It has spoken out, not only in criminal cases . . ., but also in all types of cases where administrative and regulatory action were under scrutiny." (360 U.S. , 79 S. Ct. 1413).

Greene and Peters are clearly definitive of the issues involved in this case. The awkward efforts of appellants to differentiate these cases "cannot but make the judicious grieve."

II.

An attempt made by Congress to authorize the Civil Rights Commission to deny Respondents the Right of Confrontation and Cross-Examination in such hearings, would be unconstitutional.

Although this issue was never reached in Greene or Peters, supra, it is submitted that a fair reading of

those cases forces one to conclude that these fundamental safeguards of due process are constitutionally based and cannot be denied short of a change in the Constitution itself. The last quoted excerpt from Greene, is sufficient to illustrate that these are fundamental rights — the birthright of every American citizen. They cannot be altered, abridged or denied without first changing the fundamental law from whence they are derived.

A clear exposition of this point is set forth in the concurring opinion of Mr. Justice Douglas in Peters.

> "With all deference, I do not think we can avoid the constitutional issue in this case.
>
> • • •
>
> "Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work — things more precious than property itself. We have here a system where government with all its power and authority condemns a man to a suspect class and the outer darkness, without the rudiments of a fair trial. The practice of using faceless informers has apparently spread through a vast domain . . . . It is an un-American practice which we should condemn. It deprives men of 'liberty' within the meaning of the Fifth Amendment, for one of man's most precious liberties is his right to work. When a man is deprived of that 'liberty' without a fair trial, he is denied due process." (349 U.S. 350-352, 79 S. Ct. 800-801)

Of course, in view of the fact that there has been no explicit authorization for the Commission's actions

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here complained of, there is no necessity for passing upon this important constitutional issue. It is merely pointed out to show that even if Greene were cast aside, and the petitioners' argument of authority based upon "inference and implication" accepted, the appeal must still be rejected.

III.

The arguments of Petitioners' brief are fundmentally fallacious and will not stand careful scrutiny.

On first reading of petitioners' brief, one is struck by the vast amount of industry and research that must have gone into its production. Also, one is impressed by the superficial plausibility of most of the arguments. On a second reading, one begins to wonder why — with all of the study that obviously went into this enterprise — the appellants were unable to uncover anything more closely related to the instant case than the examples cited in their brief. Also, one commences to wonder if the bases of the arguments relied upon are as solid as they appeared at first blush. On a third reading, it becomes clear that this brief is nothing more or less than an attempt to substitute clever, glib arguments for lack of fundamental constitutional justifications. A critical examination of each of the points reveals this inherent weakness.

A.

The first proposition advanced by petitioners is that "Congress devoted considerable attention to the question of procedures which should be followed by the Com-

mission" and in Section 102 of the Act, set forth all necessary requirements in connection with hearings. Subsequently, the Commission itself adopted rules which went beyond the terms of the Act itself, thus clearly showing that the so called rules provided by the Act were never considered complete or exclusive. However, in spite of this, petitioners argue that when Congress placed certain limitations on the procedures to be followed at hearings, it thereby signified that the Commission was free to reject all other safeguards of due process.

The argument that because one right has been safeguarded by law, all others are left to the discretion and mercy of the administrative agency, is one of the oldest and least tenable precepts of the bureaucrat. If the police are by law enjoined from the use of the rack to extract confessions, this argument would permit them to assert the right to use the rubber hose which had not been specifically excluded.

From the very first, our founding fathers were wary of this. In the act whereby the State of New York ratified the Constitution of the United States, an outspoken and clearcut warning was issued against this very argument. Realizing that the proposed Constitution denied certain powers to Congress, the New York Convention in its act of ratification provided:

> "And that those Clauses in the said Constitution which declare, that Congress shall not have or exercise certain Powers, do not imply that Congress is entitled to any Powers not given by the said Constitution; but such Clauses are to be construed

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> either as exceptions to certain specified Powers, or as inserted merely for greater Caution." (House Document No. 398, 69th Congress (1927), Page 1035.)

This declaration was specifically made as a condition on ratification of the Constitution.

To bolster their claim of authorization by implication, petitioners cite affirmative statements by Representative Keating and Representative Seller, and a negative statement by Senator Talmadge. If the Congressional intent had been to authorize such a departure from recognized and established procedures, it is submitted that it could be established far more definitively than by the isolated remarks of only two members out of the four hundred thirty-five members of the House. The very paucity of authorities on this point demonstrates the lack of "careful and purposeful consideration by those responsible for enacting and implementing our laws." Hence, the most that could be derived from the information cited in petitioners' brief is that Congress evidenced no intent with regard to the points involved in this case.

B.

A considerable portion of petitioners' brief is devoted to a discussion of the House "fair play rules" and practices of Congressional committees in the conduct of hearings in connection with proposed legislation. This portion of the brief is based upon a bland assumption that the Civil Rights Commission is an arm of the Congress of the United States and entitled to all of the privileges

and prerogatives of a Congressional Committee. (see, Petitioners' Brief, p. 18, line 3.) It is an assumption contrary to fact. The Civil Rights Commission, as clearly stated in the Civil Rights Act, is nothing more or less than an agency "in the executive branch of the Government." As such, it is subject to all of the limitations and restrictions applicable to other administrative agencies. To warrant an exemption from such regulations, the Commission must show explicit authority therefor.

The interesting discussion of the practices of executive agencies found at Page 42 et seq of Petitioners' Brief, should be sufficient, in itself, to rebut the claim of immunity from the restrictions of due process. This argument commences with the following admission:

> "We have been unable to find any solid evidence as to the practice of such agencies in providing witnesses with the contents and sources of allegations against them." (Petitioners' Brief, Page 52, line 28 et seq.)

Another singular fact about this brief is that no cases are cited showing that the practices advocated have ever been judicially approved in connection with any executive agency. Petitioners have simply invoked the shopworn argument "silence gives consent."

C.

In the Court below, petitioners devoted a considerable amount of their energies to proving that the Administrative Procedure Act did not apply to the Commission. (Cf. Memorandum In Support of Motion For

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Summary Judgment, Sec. III, page 11 et seq.). The District Court was apparently convinced, because it refused to apply the Administrative Procedure Act. The Commission's principal objection to this Act was that in Sections 5 and 7 it specified rights of notice, confrontation and cross-examination in "every case of adjudication." The Act contained a clear definition of the term "adjudication." This definition was broad enough to cover an investigative hearing which might terminate in a declaration affecting complainants. (5 U.S.C. 1001).

Although they are still unwilling to acknowledge the applicability of the Administrative Procedure Act, petitioners now have adopted and advocate the test prescribed by Sections 5 and 7 of that act. They claim that the safeguards of due process are applicable only in instances of "adjudication." However, petitioners have not adopted the definition of "adjudication" as given in the Administrative Procedure Act. Rather, they contend that "adjudication" means the same as "sanction" as defined in that Act. Nothing could be more palpably erroneous.

After carefully studying the leading cases, respondents are firmly convinced that no easy formula or standard can be administered to determine when such safeguards apply. It is very clear that the term "adjudication" offers no magical solution.

If any doubt exists on this score all one need do is turn to the leading case — *Greene v. McElroy*. In a lengthy majority opinion, a short concurring opinion and

a lengthy dissenting opinion, the word "adjudication" is not even mentioned, much less used as a standard.

The closest thing to a reliable test that the Court has ever laid down is the above quoted rule of Greene, ". . . where governmental action seriously injures an individual, and the reasonablenes of the action depends on fact finding . . . ."

D.

Perhaps the most disturbing of all the arguments of petitioners' brief is the implication running through it that practices abhorrent to "due process" should be permitted if it can be shown that some analogous agency got away with such in the past.

Disregarding, for the moment, the great differences between the cited instances and the present case — isn't it alarming to hear a duly constituted Commission, created for the purpose of protecting our "civil rights", contending, in effect, that such rights should be limited by the narrowest construction ever given in the past? This is in direct conflict with the conception of "due process" as a "living principle."

Turning to the "documentation" of petitioners' brief, one finds that the cited instances of administrative deviation from "due process" are in no way comparable to the actions of the Commission.

The Roberts Commission was appointed in war time to investigate a matter directly affecting the security of

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the country. It was appointed under the War Power and the principles involved were high officers of the Army and Navy. It was the type of exceptional proceeding which "proves the rule" of the Greene case.

Moreover, the petitioners cite no cases holding that the Roberts Commission, or the other cited agencies had proceeded Constitutionally in such hearings.

CONCLUSION

It is, therefore, respectfully submitted that the petition for certiorari should be denied, and that the judgment of the district court affirmed.

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Box 209
Homer, Louisiana
Attorney for Respondents

January 7, 1960.

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SUPREME COURT OF THE UNITED STATES

Nos. 549 AND 550.—OCTOBER TERM, 1959.

John A. Hannah, et al., Appellants, v. Margaret M. Larche, et al.	On Appeal From the United States District Court for the Western District of Louisiana.
549	
John A. Hannah, et al., Petitioners, v. J. A. H. Slawson, et al.	On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
550	

[June 20, 1960.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

These cases involve the validity of certain Rules of Procedure adopted by the Commission on Civil Rights, which was established by Congress in 1957.[1] Civil Rights Act of 1957, 71 Stat. 634, 42 U. S. C. §§ 1975–1975e. They arise out of the Commission's investigation of alleged Negro voting deprivations in the State of Louisiana. The appellees in No. 549 are registrars of voters in the State of Louisiana, and the respondents in No. 550 are private citizens of Louisiana.[2] After having been summoned to

[1] Although the Civil Rights Act of 1957 provided that the Commission should cease to exist within two years after its creation, 71 Stat. 635, 42 U. S. C. § 1975c, in 1959 Congress extended the Commission's life for an additional two to four years. 73 Stat. 724.

[2] The appellants in No. 549 and the petitioners in No. 550 are the individual members of the Civil Rights Commission. Hereinafter, they will be referred to as "the Commission." The appellees in No. 549 and the respondents in No. 550 will both hereinafter be referred to as "respondents."

appear before a hearing which the Commission proposed to conduct in Shreveport, Louisiana, these registrars and private citizens requested the United States District Court for the Western District of Louisiana to enjoin the Commission from holding its anticipated hearing. It was alleged, among other things, that the Commission's Rules of Procedure governing the conduct of its investigations were unconstitutional. The specific rules challenged are those which provide that the identity of persons submitting complaints to the Commission need not be disclosed, and that those summoned to testify before the Commission, including persons against whom complaints have been filed, may not cross-examine other witnesses called by the Commission. The District Court held that the Commission was not authorized to adopt the Rules of Procedure here in question, and therefore issued an injunction which prohibits the Commission from holding any hearings in the Western District of Louisiana as long as the challenged procedures remain in force. The Commission requested this Court to review the District Court's decision.[3] We granted the Commission's motion to advance the cases, and oral argument was accordingly scheduled on the jurisdiction on appeal in No. 549, on the petition for certiorari in No. 550, and on the merits of both cases.

Having heard oral argument as scheduled, we now take jurisdiction in No. 549 and grant certiorari in No. 550. The specific questions which we must decide are (1) whether the Commission was authorized by Congress to adopt the Rules of Procedure challenged by the re-

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[3] Because No. 549 was heard and decided by a three-judge District Court, a direct appeal to this Court was sought by the Commission pursuant to 28 U. S. C. § 1253. The Commission also filed an appeal in No. 550 with the United States Court of Appeals for the Fifth Circuit. However, before the Court of Appeals could render a decision in No. 550, the Commission filed a petition for certiorari pursuant to Rule 20 of this Court.

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spondents, and (2) if so, whether those procedures violate the Due Process Clause of the Fifth Amendment.

A description of the events leading up to this litigation is necessary not only to place the legal questions in their proper factual context, but also to indicate the significance of the Commission's proposed Shreveport hearing. During the months prior to its decision to convene the hearing, the Commission had received some sixty-seven complaints from individual Negroes who alleged that they had been discriminatorily deprived of their right to vote. Based upon these complaints, and pursuant to its statutory mandate to "investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin," [4] the Commission began its investigation into the Louisiana voting situation by making several *ex parte* attempts to acquire information. Thus, in March 1959, a member of the Commission's staff interviewed the Voting Registrars of Claiborne, Caddo, and Webster Parishes, but obtained little relevant information. During one of these interviews the staff member is alleged to have informed Mrs. Lannie Linton, the Registrar of Claiborne Parish, that the Commission had on file four sworn statements charging her with depriving Negroes of their voting rights solely because of their race. Subsequent to this interview, Mr. W. M. Shaw, Mrs. Linton's personal attorney, wrote a letter to Mr. Gordon M. Tiffany, the Staff Director of the Commission, in which it was asserted that Mrs. Linton knew the sworn complaints lodged against her to be false. The letter also indicated that Mrs. Linton wished to prefer perjury charges against the affiants, and Mr. Shaw therefore demanded that the Commission

[4] Section 104 of the Civil Rights Act of 1957, 71 Stat. 635, 42 U. S. C. § 1975c (a)(1).

forward to him copies of the affidavits so that a proper presentment could be made to the grand jury. On April 14, 1959, Mr. Tiffany replied to Mr. Shaw's letter and indicated that the Commission had denied the request for copies of the sworn affidavits. Mr. Shaw was also informed of the following official statement adopted by the Commission:

> "The Commission from its first meeting forward, having considered all complaints submitted to it as confidential because such confidentiality is essential in carrying out the statutory duties of the Commission, the Staff Director is hereby instructed not to disclose the names of complainants or other information contained in complaints to anyone except members of the Commission and members of the staff assigned to process, study, or investigate such complaints."

A copy of Mr. Tiffany's letter was sent to Mr. Jack P. F. Gremillion, the Attorney General of Louisiana, who had previously informed the Commission that under Louisiana law the Attorney General is the legal adviser for all voting registrars in any hearing or investigation before a federal commission.

Another attempt to obtain information occurred on May 13, 1959, when Mr. Tiffany, upon Commission authorization, sent a list of 315 written interrogatories to Mr. Gremillion. These interrogatories requested very detailed and specific information, and were to be answered by the voting registrars of nineteen Louisiana parishes. Although Mr. Gremillion and the Governor of Louisiana had previously assented to the idea of written interrogatories, on May 28, 1959, Mr. Gremillion sent a letter to Mr. Tiffany indicating that the voting registrars refused to answer the interrogatories. The reasons given for the refusal were that many of the questions seemed unrelated

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to the functions of voting registrars, that the questions were neither accompanied by specific complaints nor related to specific complaints, and that the time and research required to answer the questions placed an unreasonable burden upon the voting registrars.

In response to this refusal, on May 29, 1959, Mr. Tiffany sent a telegram to Mr. Gremillion, informing the latter that the interrogatories were based upon specific allegations received by the Commission, and reaffirming the Commission's position that the identity of specific complainants would not be disclosed. Mr. Tiffany's letter contained a further request that the interrogatories be answered and sent to the Commission by June 5, 1959. On June 2, 1959, Mr. Gremillion wrote a letter to Mr. Tiffany reiterating the registrars' refusal, and again requesting that the names of complainants be disclosed.

Finally, as a result of this exchange of correspondence, and because the Commission's attempts to obtain information *ex parte* had been frustrated, the Commission, acting pursuant to Section 105 (f) of the Civil Rights Act of 1957,[5] decided to hold the Shreveport hearing commencing on July 13, 1959.

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[5] Section 105 (f) of the Civil Rights Act authorizes the Commission to hold hearings and to subpoena witnesses. That section provides:

"(f) *Hearings; issuance of subpenas.*

"The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act. hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 1975a (j) and (k) of this title, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman." 71 Stat. 636, 42 U. S. C. § 1975d (f).

Notice of the scheduled hearing was sent to Mr. Gremillion, and between June 29 and July 6, subpoenas *duces tecum* were served on the respondents in No. 549, ordering them to appear at the hearing and to bring with them various voting and registration records within their custody and control. Subpoenas were also served upon the respondents in No. 550. These private citizens were apparently summoned to explain their activities with regard to alleged deprivations of Negro voting rights.[6]

On July 8, 1959, Mr. Tiffany wrote to Mr. Gremillion, enclosing copies of the Civil Rights Act and of the Commission's Rules of Procedure.[7] Mr. Gremillion's attention was also drawn to Section 102 (h) of the Civil Rights Act, which permits witnesses to submit, subject to the discretion of the Commission, brief and pertinent sworn statements for inclusion in the record.[8]

Two days later, on July 10, 1959, the respondents in No. 549 and No. 550 filed two separate complaints in the District Court for the Western District of Louisiana. Both complaints alleged that the respondents would suffer irreparable harm by virtue of the Commission's refusal to

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[6] The role of private citizens in depriving Negroes of their right to vote was one of the questions involved in *United States* v. *Thomas*, — F. Supp. — (E. D. La.), aff'd as to other defendants, 362 U. S. 58.

[7] Rule 3 (i) of the Commission's Rules of Procedure, adopted on July 1, 1958, prohibits witnesses or their counsel from cross-examining other witnesses. That Rule reads:

"Interrogation of witnesses at hearings shall be conducted only by members of the Commission or by authorized staff personnel."

[8] The full text of Section 102 (h) of the Civil Rights Act reads as follows:

"(h) *Submission of written statements.*

"In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings." 71 Stat. 634, 42 U. S. C. § 1975a (h).

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furnish the names of persons who had filed allegations of voting deprivations, as well as the contents of the allegations, and by its further refusal to permit the respondents to confront and cross-examine the persons making such allegations. In addition, both complaints alleged that the Commission's refusals not only violated numerous provisions of the Federal Constitution, but also constituted "ultra vires" acts not authorized either by Congress or the Chief Executive. The respondents in No. 549 also alleged that they could not comply with the subpoenas *duces tecum* because Louisiana law prohibited voting registrars from removing their voting records except "upon the order of a competent court," and because the Commission was not such a "court." Finally, the complaint in No. 549 alleged that the Civil Rights Act was unconstitutional because it did not constitute "appropriate legislation within the meaning of Section (2) of the XV Amendment."

Both complaints sought a temporary restraining order and a permanent injunction prohibiting the members of the Commission (a) from compelling the "testimony from or the production of any records" by the respondents until copies of the sworn charges, together with the names and addresses of the persons filing such charges were given to the respondents;[9] (b) from "conducting any hearing pursuant to the rules and regulations adopted by" the Commission; and (c) from "conspiring together . . . or with any other person . . . to deny complainants their rights and privileges as citizens" of Louisiana or the United States "or to deny to complainants their right to be confronted by their accusers, to know the nature and

[9] Under the Civil Rights Act, the Commission not only has the power to issue subpoenas under Section 105 (f), but, as is customary when Congress confers the subpoena power on an investigative agency, the Commission is also authorized to enforce its subpoenas by enlisting the aid of the federal courts. 71 Stat. 636, 42 U. S. C. § 1975d (g).

character of the charges made against them," and to be represented by counsel. The complaint in No. 549 also sought a declaratory judgment that the Civil Rights Act of 1957 was unconstitutional.

On the day that the complaints were filed, the district judge held a combined hearing on the prayers for temporary restraining orders. On July 12, 1959, he found that the respondents would suffer irreparable harm if the hearings were held as scheduled, and he therefore issued the requested temporary restraining orders and rules to show cause why a preliminary injunction should not be granted. *Larche* v. *Hannah*, 176 F. Supp. 791. The order prohibited the Commission from holding any hearings which concerned the respondents or others similarly situated until a determination was made on the motion for a preliminary injunction.

Inasmuch as the complaint in No. 549 attacked the constitutionality of the Civil Rights Act, a three-judge court was convened pursuant to 28 U. S. C. § 2282. Since the complaint in No. 550 did not challenge the constitutionality of the Civil Rights Act of 1957, that case was scheduled to be heard by a single district judge. That district judge was also a member of the three-judge panel in No. 549, and a combined hearing was therefore held on both cases on August 7, 1959.

On October 7, 1959, a divided three-judge District Court filed an opinion in No. 549. *Larche* v. *Hannah*, 177 F. Supp. 816. The court held that the Civil Rights Act of 1957 was constitutional since it "very definitely constitutes appropriate legislation" authorized by the Fourteenth and Fifteenth Amendments and Article I, Section 2, of the Federal Constitution. *Id.*, at 821. The court then held that since the respondents' allegations with regard to apprisal, confrontation, and cross-examination raised a "serious constitutional issue," this Court's deci-

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sion in *Greene* v. *McElroy*, 360 U. S. 474, required a preliminary determination as to whether Congress specifically authorized the Commission "to adopt rules for investigations . . . which would deprive parties investigated of their rights of confrontation and cross-examination and their right to be apprised of the charges against them." 177 F. Supp., at 822. The court found that Congress had not so authorized the Commission, and an injunction was therefore issued. In deciding the case on the issue of authorization, the court never reached the "serious constitutional issue" raised by the respondents' allegations.[10] The injunction prohibits the Commission from holding any hearing in the Western District of Louisiana wherein the registrars, "accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation, and cross-examination." [11] The single dis-

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[10] Judge Wisdom, who dissented, was of the opinion that the procedures adopted by the Commission were authorized by Congress, and that those procedures were also constitutional. 177 F. Supp., at 828.

[11] The court's injunction reads as follows:

"For reasons assigned in the Court's written opinion of October 6, 1959,

"It is ordered, adjudged and decreed that defendants and their agents, servants, employees and attorneys are enjoined and restrained from conducting the proposed hearing in Shreveport, Louisiana, wherein plaintiff registrars, accused of depriving others of the right to vote, would be denied the right of apprisal, confrontation and cross examination.

"This injunction does not prohibit all hearings pursuant to Public Law 85-315, 85th Congress, 42 U. S. C. A. 1975, et seq., but only those hearings proposed to be held in the Western District of Louisiana wherein the accused are denied the right of apprisal, confrontation and cross examination.

"Thus done and signed in Chambers on this the 9 day of November, 1959."

The breadth of this injunction is indicated by the fact that the Commission is not only prohibited from compelling respondents'

trict judge rendered a decision in No. 550 incorporating by reference the opinion of the three-judge District Court, and an injunction, identical in substance to that entered in No. 549, was issued.

I.

We held last Term in *Greene* v. *McElroy*, *supra*, that when action taken by an inferior governmental agency was accomplished by procedures which raise serious constitutional questions, an initial inquiry will be made to determine whether or not "the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use." *Id.*, at 507. The considerations which prompted us in *Greene* to analyze the question of authorization before reaching the constitutional issues presented are no less pertinent in this case. Obviously, if the Civil Rights Commission was not authorized to adopt the procedures complained of by the respondents, the case could be disposed of without a premature determination of serious constitutional questions. See *Vitarelli* v. *Seaton*, 359 U. S. 535; *Kent* v. *Dulles*, 357 U. S. 116; *Watkins* v. *United States*, 354 U. S. 178; *Peters* v. *Hobby*, 349 U. S. 331.

We therefore consider first the question of authorization. As indicated above, the Commission specifically refused to disclose to the respondents the identity of persons who had submitted sworn complaints to the Commission and the specific charges contained in those complaints. Moreover, the respondents were informed by the Commission that they would not be permitted to cross-examine

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appearance at the hearing, but it is also enjoined from conducting *any* hearing in the Western District of Louisiana under existing rules of procedure, whether or not the respondents are called as witnesses.

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any witnesses at the hearing. The respondents contend, and the court below held, that Congress did not authorize the adoption of procedural rules which would deprive those being investigated by the Commission of the rights to apprisal, confrontation, and cross-examination. The court's holding is best summarized by the following language from its opinion:

> "[W]e find nothing in the Act which expressly authorizes or permits the Commission's refusal to inform persons, under investigation for criminal conduct, of the nature, cause and source of the accusations against them, and there is nothing in the Act authorizing the Commission to deprive those persons of the right of confrontation and cross-examination." 177 F. Supp., at 822.

After thoroughly analyzing the Rules of Procedure contained in the Civil Rights Act of 1957 and the legislative history which led to the adoption of that Act, we are of the opinion that the court below erred in its conclusion and that Congress did authorize the Commission to adopt the procedures here in question.

It could not be said that Congress ignored the procedures which the Commission was to follow in conducting its hearings. Section 102 of the Civil Rights Act of 1957 lists a number of procedural rights intended to safeguard witnesses from potential abuses. Briefly summarized, the relevant subdivisions of Section 102 provide that the Chairman shall make an opening statement as to the subject of the hearing; that a copy of the Commission's rules shall be made available to witnesses; that witnesses "may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights"; that potentially defamatory, degrading, or incriminating testimony shall be received in executive session, and

that any person defamed, degraded, or incriminated by such testimony shall have an opportunity to appear voluntarily as a witness and to request the Commission to subpoena additional witnesses; that testimony taken in executive session shall be released only upon the consent of the Commission; and that witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record.[12]

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[12] The complete text of Section 102 reads as follows:

"§ 1975a. *Rules of procedure.*

"(a) *Opening statement.*

"The Chairman or one designated by him to act as Chairman at a hearing of the Commission shall announce in an opening statement the subject of the hearing.

"(b) *Copy of rules.*

"A copy of the Commission's rules shall be made available to the witness before the Commission.

"(c) *Attendance of counsel.*

"Witnesses at the hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights.

"(d) *Censure and exclusion of counsel.*

"The Chairman or Acting Chairman may punish breaches of order and decorum and unprofessional ethics on the part of counsel, by censure and exclusion from the hearings.

"(e) *Defamatory, degrading or incriminating evidence.*

"If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

"(f) *Requests for additional witnesses.*

"Except as provided in this section and section 1975d (f) of this title, the Chairman shall receive and the Commission shall dispose of requests to subpena additional witnesses.

[*Footnote 12 continued on p. 13.*]

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The absence of any reference to apprisal, confrontation, and cross-examination, in addition to the fact that counsel's role is specifically limited to advising witnesses of their constitutional rights, creates a presumption that Congress did not intend witnesses appearing before the Commission to have the rights claimed by respondents. This initial presumption is strengthened beyond any

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"(g) *Release of evidence taken in executive session.*

"No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the Commission. Whoever releases or uses in public without the consent of the Commission evidence or testimony taken in executive session shall be fined not more than $1,000, or imprisoned for not more than one year.

"(h) *Submission of written statements.*

"In the discretion of the Commission, witnesses may submit brief and pertinent sworn statements in writing for inclusion in the record. The Commission is the sole judge of the pertinency of testimony and evidence adduced at its hearings.

"(i) *Transcripts.*

"Upon payment of the cost thereof, a witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Commission.

"(j) *Witness fees.*

"A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence, including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

"(k) *Restriction on issuance of subpena.*

"The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other

reasonable doubt by an investigation of the legislative history of the Act.

The complete story of the 1957 Act begins with the 1956 House Civil Rights Bill, H. R. 627. That bill was reported out of the House Judiciary Committee without any reference to the procedures to be used by the Commission in conducting its hearings. H. R. Rep. No. 2187, 84th Cong., 2d Sess. During the floor debate, Representative Dies of Texas introduced extensive amendments designed to regulate the procedure of Commission hearings. 102 Cong. Rec. 13542. Those amendments would have guaranteed to witnesses appearing before the Commission all of the rights claimed by the respondents in these cases. The amendments provided, in pertinent part, that a person who might be adversely affected by the testimony of another "shall be fully advised by the

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matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business." 71 Stat. 634, 42 U. S. C. § 1975a.

In addition to the procedural safeguards provided by Section 102 of the Act, the Commission's Rules of Procedure grant additional protection. Thus, Rule 3 (f) of the Commission's Rules of Procedure provides:

"(f) An accurate transcript shall be made of the testimony of all witnesses in all hearings, either public or executive sessions, of the Commission or of any subcommittee thereof. Each witness shall have the right to inspect the record of his own testimony. A transcript copy of his testimony may be purchased by a witness pursuant to Rule 2 (i) above. Transcript copies of public sessions may be obtained by the public upon payment of the cost thereof."

And Rule 3 (j) provides:

"(j) If the Commission pursuant to Rule 2 (e), or any subcommittee thereof, determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall advise such person that such evidence has been given and it shall afford such person an opportunity to read the pertinent testimony and to appear as a voluntary witness or to file a sworn statement in his behalf."

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Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented"; that a person adversely affected by evidence or testimony given at a public hearing could "appear and testify or file a sworn statement in his own behalf"; that such a person could also "have the adverse witness recalled" within a stated time; and that he or his counsel could cross-examine adverse witnesses.[13]

[13] The text of the pertinent Dies' amendment reads as follows:

"'(q) A person shall be considered to be adversely affected by evidence or testimony of a witness if the Commission determines that: (i) the evidence or testimony would constitute libel or slander if not presented before the Commission or (ii) the evidence or testimony alleges crime or misconduct or tends to disgrace or otherwise to expose the person to public contempt, hatred, or scorn.

"'(r) Insofar as practicable, any person whose activities are the subject of investigation by the Commission, or about whom adverse information is proposed to be presented at a public hearing of the Commission, shall be fully advised by the Commission as to the matters into which the Commission proposes to inquire and the adverse material which is proposed to be presented. Insofar as practicable, all material reflecting adversely on the character or reputation of any individual which is proposed to be presented at a public hearing of the Commission shall be first reviewed in executive session to determine its reliability and probative value and shall not be presented at a public hearing except pursuant to majority vote of the Commission.

"'(s) If a person is adversely affected by evidence or testimony given in a public hearing, that person shall have the right: (i) to appear and testify or file a sworn statement in his own behalf, (ii) to have the adverse witness recalled upon application made within thirty days after introduction of such evidence or determination of the adverse witness' testimony, (iii) to be represented by counsel as heretofore provided, (iv) to cross-examine (in person or by counsel) such adverse witness, and (v) subject to the discretion of the Commission, to obtain the issuance by the Commission of subpenas for witnesses, documents, and other evidence in his defense. Such opportunity for rebuttal shall be afforded promptly and, so far as practicable, such hearing shall be conducted at the same place

The bill, as finally passed by the House, contained all of the amendments proposed by Representative Dies. 102 Cong. Rec. 13998–13999. However, before further action could be taken, the bill died in the Senate. Although many proposals relating to civil rights were introduced in the 1957 Session of Congress, two bills became the prominent contenders for support. One was S. 83, a bill introduced by Senator Dirksen containing the same procedural provisions that the amended House bill in 1956 had contained. The other bill, H. R. 6127, was introduced by Representative Celler, Chairman of the House Judiciary Committee, and this bill incorporated the so-called House "fair play" rules as the procedures which should govern the conduct of Commission hearings.[14] After extensive debate and hearings, H. R. 6127 was finally passed by both Houses of Congress, and the

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and under the same circumstances as the hearing at which adverse testimony was presented.

" 'Cross-examination shall be limited to one hour for each witness, unless the Commission by majority vote extends the time for each witness or group of witnesses.

" '(t) If a person is adversely affected by evidence or testimony given in executive session or by material in the Commission files or records, and if public release of such evidence, testimony, or material is contemplated, such person shall have, prior to the public release of such evidence or testimony or material or any disclosure of or comment upon it by members of the Commission or Commission staff or taking of similar evidence or testimony in a public hearing, the rights heretofore conferred and the right to inspect at least as much of the evidence or testimony of the adverse witness or material as will be made public or the subject of a public hearing.

" '(u) Any witness (except a member of the press who testifies in his professional capacity) who gives testimony before the Commission in an open hearing which reflects adversely on the character or reputation of another person may be required by the Commission to disclose his sources of information, unless to do so would endanger the national security.' " 102 Cong. Rec. 13542–13543.

[14] The complete test of the House "fair play" rules may be found in H. R. Res. 151, 84th Cong., 1st Sess.

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House "fair play" rules, which make no provision for advance notice, confrontation, or cross-examination, were adopted in preference to the more protective rules suggested in S. 83.[15]

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[15] That Congress focused upon the issues here involved and recognized the distinctions between H. R. 6127 and S. 83 is attested to by the following extracts from the floor debate and committee hearings:

In testifying before both the House and Senate Subcommittees considering the various proposed civil rights bills, Attorney General Brownell supported the adoption of the House "fair play" rules instead of the more restrictive procedures outlined in S. 83. Thus, at the Senate hearings, the Attorney General made the following statement:

"Now there is one other addition to S. 83 that I would like to make special reference to and that is the provision for rules of procedure contained in section 102 on pages 2 to 10 of S. 83. These rules of procedure are considerably more restrictive than those imposed on regular committees of the House and Senate. There is much in them which clearly would be desirable. We have not as yet had any experience with the use of rules such as those proposed here and we cannot predict the extent to which they might be used to obstruct the work of the Commission.

. . . . . .

"Yet I feel that the task to be given to this Commission is of such great public importance that it would be a mistake to make it the vehicle for experimenting with new rules which may have to be tested out under the courts and this is only a 2-year Commission and you might have to spend those 2 years studying the rules instead of getting at the facts." Hearings before Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 85th Cong., 1st Sess. 14, 15.

See also Hearings before Subcommittee No. 5 of the House Judiciary Committee, 85th Cong., 1st Sess. 593.

The lack of any right to cross-examine witnesses was commented upon by members of both the House and the Senate:

Statement of Senator Talmadge during the Senate floor debate, 103 Cong. Rec. 11504:

"No provision is made for notification of persons against whom charges are to be made. No provision is made for persons adversely affected by testimony taken by the Commission to be present when

The legislative background of the Civil Rights Act not only provides evidence of congressional authorization, but it also distinguishes these cases from *Greene* v. *McElroy, supra,* upon which the court below relied so

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they are accused or later to confront and cross-examine their accusers."

Statement of Senator Stennis during Senate floor debate, 103 Cong. Rec. 13836:

"Defamatory testimony tending to defame, degrade, or incriminate any person cannot be heard by the person slandered, since the testimony must be taken in executive session. There is no requirement in the proposed statute that the person injured by defamatory testimony shall have an opportunity to examine the nature of the adverse testimony. He has no right of confrontation nor cross-examination, and his request to subpena witnesses on his behalf falls within the arbitrary discretion of the Commission. There is no right to subpena witnesses."

Statement of Representative Kilday during House floor debate, 103 Cong. Rec. 8673:

"The bill provides that witnesses may be accompanied by counsel, for what purpose? 'For the purpose of advising them concerning their constitutional rights.' That is all. Even though the Commission or its own counsel develops only a portion of a transaction, and that adverse to the witness, his lawyer cannot ask a single question to develop the remainder of the transaction or the portion favorable to him."

Statement of Representative Frazier during Hearings before the House Rules Committee, 85th Cong., 1st Sess. 176:

"The authors of this proposal contemplate that it will yield thousands of complaints and even more thousands of subpenas will be issued. The various allegations will, in the first instance, be incontrovertible and wholly ex parte and the principal concerned, against whom the charges are made, when summoned as a witness is given no opportunity to cross-examine. True, the person summoned as a witness may have counsel (sec. 102), but only for the purpose of advising him of his constitutional rights."

That the bill contained the House "fair play" rules is demonstrated by the following statement of Representative Celler, the author of the bill:

"*The rules of procedure of the Commission are the same as those which govern the committees of the House.* For example, the chair-

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heavily. In *Greene* there was no express authorization by Congress or the President for the Department of Defense to adopt the type of security clearance program there involved. Nor was there any legislative history or executive directive indicating that the Secretary of Defense was authorized to establish a security clearance program which could deprive a person of his government employment on the basis of secret and undisclosed information. Therefore, we concluded in *Greene* that because of the serious constitutional problems presented, mere acquiescence by the President or the Congress would not be sufficient to constitute authorization for the security clearance procedures adopted by the Secretary of Defense. The facts of this case present a sharp contrast to those before the Court in *Greene*. Here, we have substantially more than the mere acquiescence upon which the Government relied in *Greene*. There was a conscious, intentional selection by Congress of one bill, providing for none of the procedures demanded by respondents, over another bill, which provided for all of those procedures. We have no doubt that Congress' consideration and rejection of the procedures here at issue constituted an authorization to the Commission to conduct its hearings according to the Rules of Procedure it has adopted, and to deny to witnesses the rights of apprisal, confrontation, and cross-examination.

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man is required to make an opening statement as to the subject of the hearing. Witnesses are furnished with a copy of the Commission's rules and may be accompanied by counsel. The chairman is authorized to punish breaches of order by censure and exclusion. Protection is furnished to witnesses when it appears that a person may be the subject of derogatory information by requiring such evidence to be received in executive session, and affording the person affected the right to appear and testify, and further to submit a request for subpena of additional witnesses." 103 Cong. Rec. 8491. (Emphasis supplied.)

II.

The existence of authorization inevitably requires us to determine whether the Commission's Rules of Procedure are consistent with the Due Process Clause of the Fifth Amendment.[16]

Since the requirements of due process frequently vary with the type of proceeding involved, *e. g.*, compare *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126, 152, with *Interstate Commerce Comm'n* v. *Louisville & N. R. Co.*, 227 U. S. 88, 91, we think it is necessary at the outset to ascertain both the nature and function of this Commission. Section 104 of the Civil Rights Act of 1957 specifies the duties to be performed by the Commission. Those duties consist of (1) investigating written, sworn allegations that anyone has been discriminatorily deprived of his right to vote; (2) studying and collecting information "concerning legal developments constituting a denial of equal protection of the laws under the Constitution"; and (3) reporting to the President and Congress on its activities, findings, and recommendations.[17] As is appar-

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[16] Although the respondents contend that the procedures adopted by the Commission also violate their rights under the Sixth Amendment, their claim does not merit extensive discussion. That Amendment is specifically limited to "criminal prosecutions," and the proceedings of the Commission clearly do not fall within that category. See *United States* v. *Zucker*, 161 U. S. 475, 481.

[17] The full text of Section 104 of the Act reads as follows:

"§ 1975c. *Duties; reports; termination.*

"(a) The Commission shall—

"(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

"(2) study and collect information concerning legal developments

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ent from this brief sketch of the statutory duties imposed upon the Commission, its function is purely investigative and fact-finding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

The specific constitutional question, therefore, is whether persons whose conduct is under investigation by a governmental agency of this nature are entitled, by virtue of the Due Process Clause, to know the specific charges that are being investigated, as well as the identity of the complainants,[18] and to have the right to cross-

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constituting a denial of equal protection of the laws under the Constitution; and

"(3) appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

"(b) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from September 9, 1957.

"(c) Sixty days after the submission of its final report and recommendations the Commission shall cease to exist." 71 Stat. 635, 42 U. S. C. § 1975c.

[18] It should be noted that the respondents in these cases did have notice of the general nature of the inquiry. The only information withheld from them was the identity of specific complainants and the exact charges made by those complainants. Because most of the charges related to the denial of individual voting rights, it is apparent that the Commission could not have disclosed the exact charges without also revealing the names of the complainants.

examine those complainants and other witnesses. Although these procedures are very desirable in some situations, for the reasons which we shall now indicate, we are of the opinion that they are not constitutionally required in the proceedings of this Commission.

"Due process" is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts. Thus, when governmental agencies adjudicate or make binding determinations which directly affect the legal rights of individuals, it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process. On the other hand, when governmental action does not partake of an adjudication, as for example, when a general fact-finding investigation is being conducted, it is not necessary that the full panoply of judicial procedures be used. Therefore, as a generalization, it can be said that due process embodies the differing rules of fair play, which through the years, have become associated with differing types of proceedings. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors. The nature of the alleged right involved, the nature of the proceeding, and the possible burden on that proceeding, are all considerations which must be taken into account. An analysis of these factors demonstrates why it is that the particular rights claimed by the respondents need not be conferred upon those appearing before purely investigative agencies, of which the Commission on Civil Rights is one.

It is probably sufficient merely to indicate that the rights claimed by respondents are normally associated only with adjudicatory proceedings, and that since the Commission does not adjudicate, it need not be bound by adjudicatory procedures. Yet, the respondents con-

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tend, and the court below implied, that such procedures are required since the Commission's proceedings might irreparably harm those being investigated by subjecting them to public opprobrium and scorn, the distinct likelihood of losing their jobs, and the possibility of criminal prosecutions. That any of these consequences will result is purely conjectural. There is nothing in the record to indicate that such will be the case or that past Commission hearings have had any harmful effects upon witnesses appearing before the Commission. However, even if such collateral consequences were to flow from the Commissions's investigations, they would not be the result of any affirmative determinations made by the Commission, and they would not affect the legitimacy of the Commission's investigative function.[19]

On the other hand, the investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings, and if persons who might be indirectly affected by an investigation were given an absolute right to cross-examine every witness called to testify. Fact-finding agencies without any power to adjudicate would be diverted from their legitimate duties and would be plagued by the injection of collateral issues that would make the investigation interminable. Even a person not called as a witness could demand to appear at the hearing, cross-examine any witness whose testimony or sworn affidavit allegedly defamed or incriminated him, and call an unlimited number of witnesses of his own

[19] Cf. *Sinclair* v. *United States*, 279 U. S. 263, 295, holding that Congress' legitimate right to investigate is not affected by the fact that information disclosed at the investigation may also be used in a subsequent criminal prosecution. Cf. also *McGrain* v. *Daugherty*, 273 U. S. 135, 179–180, holding that a regular congressional investigation is not rendered invalid merely because "it might possibly disclose crime or wrongdoing" on the part of witnesses summoned to appear at the investigation. *Id.*, at 180.

selection.[20] This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts.

In addition to these persuasive considerations, we think it is highly significant that the Commission's procedures are not historically foreign to other forms of investigation under our system. Far from being unique, the Rules of Procedure adopted by the Commission are similar to those which, as shown by the Appendix to this opinion,[21] have traditionally governed the proceedings of the vast majority of governmental investigating agencies.

A frequently used type of investigative agency is the legislative committee. The investigative function of such committees is as old as the Republic.[22] The volumes written about legislative investigation have proliferated almost as rapidly as the legislative committees themselves, and the courts have on more than one occasion been confronted with the legal problems presented by such committees.[23] The procedures adopted by legislative inves-

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[20] The injunction issued by the court below would certainly lead to this result since it prohibits the Commission from conducting *any* hearing under existing procedure, even though those being investigated are not summoned to testify.

[21] A compilation of the rules of procedure governing the investigative proceedings of a representative group of administrative and executive agencies, presidential commissions, and congressional committees is set out in the Appendix to this opinion.

[22] The first full-fledged congressional investigating committee was established in 1792 to "inquire into the causes of the failure of the late expedition under Major General St. Clair." 3 Annals of Cong. 493 (1792). The development and use of legislative investigation by the colonial governments is discussed in Eberling, Congressional Investigations, 13–31. The English origin of legislative investigation in this country is discussed in Dimock, Congressional Investigating Committees, 46–57.

[23] See, *e. g.*, *Kilbourn* v. *Thompson*, 103 U. S. 168; *McGrain* v. *Daugherty*, 273 U. S. 135; *Sinclair* v. *United States*, 279 U. S. 263;

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tigating committees have varied over the course of years. Yet, the history of these committees clearly demonstrates that only infrequently have witnesses appearing before congressional committees been afforded the procedural rights normally associated with an adjudicative proceeding. In the vast majority of instances, congressional committees have not given witnesses detailed notice or an opportunity to confront, cross-examine and call other witnesses.[24]

The history of investigations conducted by the executive branch of the Government is also marked by a decided absence of those procedures here in issue.[25] The best example is provided by the administrative regulatory agencies. Although these agencies normally make determinations of a quasi-judicial nature, they also frequently conduct purely fact-finding investigations. When doing the former, they are governed by the Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. §§ 1001–

Christoffel v. *United States*, 338 U. S. 84; *United States* v. *Bryan*, 339 U. S. 323; *United States* v. *Fleischman*, 339 U. S. 349; *Watkins* v. *United States*, 354 U. S. 178; *Barenblatt* v. *United States*, 360 U. S. 109.

[24] See Appendix, *post*, pp. 58–65. See also Dimock, Congressional Investigating Committees, 153; Eberling, Congressional Investigations, 283, 390; McGreary, The Developments of Congressional Investigative Power, 80; Liacos, Rights of Witnesses Before Congressional Committees, 33 B. U. L. Rev. 337, 359–361; American Bar Association, Special Committee on Individual Rights as Affected by National Security, Appendix to Report on Congressional Investigations, 67–68.

The English practice is described in Clokie and Robinson, Royal Commissions of Inquiry; Finer, Congressional Investigations: The British System, 18 U. of Chi. L. Rev. 521; Keeton, Parliamentary Tribunals of Inquiry, in Current Legal Problems 1959, 12.

[25] See Appendix, *post*, pp. 34–51. See also Gellhorn, Federal Administrative Proceedings, 108; Report of the Attorney General's Committee on Administrative Procedure and the various Monographs written by that Committee.

1011, and the parties to the adjudication are accorded the traditional safeguards of a trial. However, when these agencies are conducting nonadjudicative, fact-finding investigations, rights such as apprisal, confrontation, and cross-examination generally do not obtain.

A typical agency is the Federal Trade Commission. Its rules draw a clear distinction between adjudicative proceedings and investigative proceedings. 16 CFR, 1958 Supp., § 1.34. Although the latter are frequently initiated by complaints from undisclosed informants, *id.*, §§ 1.11, 1.15, and although the Commission may use the information obtained during investigations to initiate adjudicative proceedings, *id.*, § 1.42, nevertheless, persons summoned to appear before investigative proceedings are entitled only to a general notice of "the purpose and scope of the investigation," *id.*, § 1.33, and while they may have the advice of counsel, "counsel may not, as a matter of right, otherwise participate in the investigation." *Id.*, § 1.40. The reason for these rules is obvious. The Federal Trade Commission could not conduct an efficient investigation if persons being investigated were permitted to convert the investigation into a trial. We have found no authorities suggesting that the rules governing Federal Trade Commission investigations violate the Constitution, and this is understandable since any person investigated by the Federal Trade Commission will be accorded all the traditional judicial safeguards at a subsequent adjudicative proceeding, just as any person investigated by the Civil Rights Commission will have all of these safeguards, should some type of adjudicative proceeding subsequently be instituted.

Another regulatory agency which distinguishes between adjudicative and investigative proceedings is the Securities and Exchange Commission. This Commission conducts numerous investigations, many of which are initiated by complaints from private parties. 17 CFR

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§ 202.4. Although the Commission's Rules provide that parties to adjudicative proceedings shall be given detailed notice of the matters to be determined, *id.*, 1959 Supp., § 201.3, and a right to cross-examine witnesses appearing at the hearing, *id.*, § 201.5, those provisions of the Rules are made specifically inapplicable to investigations, *id.*, § 201.20,[28] even though the Commission is required to

[28] The Commission's practice with regard to investigations was described by the Attorney General's Committee on Administrative Procedure, Monograph, Securities Exchange Commission, 34–41. The following extract is pertinent here:

"*Where formal investigations are utilized as preliminaries to decisive proceedings, the person being investigated is normally not sent a notice, which, in any event, is not public.* The order for investigation, which includes the notice, is, however, exhibited to any person examined in the course of such investigation who so requests; since ordinarily the investigation will include the examination of the person suspected of violation, he will, thus, have actual notice of the investigation. Since a person may, on the other hand, be wholly unaware of the fact that he is being investigated until his friends who are interviewed so inform him, and since this may sometimes give rise to antagonism and a feeling that the Commission is besmirching him behind his back, no reason is apparent why, simply as a matter of good will, the Commission should not in ordinary cases send a copy of its order for investigation to the person under investigation.

. . . . . .

"The Commission's Rules of Practice expressly provide that all such rules (governing notice, amendments, objections to evidence, briefs, and the like) are inapplicable to formal investigatory hearings in the absence of express provision to the contrary in the order and with the exception of rule II, which relates to appearance and practice by representatives before the Commission. The testimony given in such investigations is recorded. . . . *In the usual case, witnesses are granted the right to be accompanied by counsel, but the latter's role is limited simply to advising the witnesses in respect of their right against self-incrimination without claiming the benefits of the immunity clause of the pertinent statute* (a right of which the presiding officer is, in any event, instructed to apprise the witnesses) *and to making objections to questions which assertedly exceed the scope of the order of investigation.*" *Id.*, 37–38. (Emphasis supplied.) See also Loss, Securities Regulation (1951), 1152.

initiate civil or criminal proceedings if an investigation discloses violations of law.[27] Undoubtedly, the reason for this distinction is to prevent the sterilization of investigations by burdening them with trial-like procedures.

Another type of executive agency which frequently conducts investigations is the Presidential commission. Although a survey of these commissions presents no definite pattern of practice, each commission has generally been permitted to adopt whatever rules of procedure seem appropriate to it,[28] and it is clear that many of the most famous presidential commissions have adopted rules similar to those governing the proceedings of the Civil Rights Commission.[29] For example, the Roberts Commission established in 1941 to ascertain the facts relating to the Japanese attack upon Pearl Harbor, and to determine whether the success of the attack resulted from any dereliction of duty on the part of American military personnel, did not permit any of the parties involved in the investigation to cross-examine other witnesses. In fact, many of the persons whose conduct was being investigated were not represented by counsel and were not present during the interrogation of other witnesses. Hearings before the Joint Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., 1st Sess., pts. 22–25.

Having considered the procedures traditionally followed by executive and legislative investigating agencies, we think it would be profitable at this point to discuss the oldest and, perhaps, the best known of all investigative bodies, the grand jury. It has never been considered

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[27] *Id.*, 1153. See also the statutes cited in the Appendix, *post*, p. 43.

[28] Marcy, Presidential Commissions, 97–102.

[29] See Appendix, *post*, pp. 52–59.

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necessary to grant a witness summoned before the grand jury the right to refuse to testify merely because he did not have access to the identity and testimony of prior witnesses. Nor has it ever been considered essential that a person being investigated by the grand jury be permitted to come before that body and cross-examine witnesses who may have accused him of wrongdoing. Undoubtedly, the procedural rights claimed by the respondents have not been extended to grand jury hearings because of the disruptive influence their injection would have on the proceedings, and also because the grand jury merely investigates and reports. It does not try.

We think it is fairly clear from this survey of various phases of governmental investigation that witnesses appearing before investigating agencies, whether legislative, executive, or judicial, have generally not been accorded the rights of apprisal, confrontation, or cross-examination. Although we do not suggest that the grand jury and the congressional investigating committee are identical in all respects to the Civil Rights Commission,[30] we mention them, in addition to the executive agencies and commissions created by Congress, to show that the rules of this Commission are not alien to those which have historically governed the procedure of investigations conducted by agencies in the three major branches of our government. The logic behind this historical practice was recognized and described by Mr. Justice Cardozo's landmark opinion in *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294. In that

[30] However, the courts have on more than one occasion likened investigative agencies of the executive branch of Government to a grand jury. See, *e. g.*, *United States* v. *Morton Salt Co.*, 338 U. S. 632, 642; *Oklahoma Press Pub. Co.* v. *Walling, Wage & Hour Adm'r.*, 327 U. S. 186, 216; *Consolidated Mines of Calif.* v. *Securities & Exchange Comm'n*, 97 F. 2d 704, 708 (C. A. 9th Cir.); *Woolley* v. *United States*, 97 F. 2d 258, 262 (C. A. 9th Cir.).

case, the Court was concerned with the type of hearing that the Tariff Commission was required to hold when conducting its investigations. Specifically, the Court was asked to decide whether the Tariff Act of 1922, 42 Stat. 858, gave witnesses appearing before the Commission the right to examine confidential information in the Commission files and to cross-examine other witnesses testifying at Commission hearings. Although the Court did not phrase its holding in terms of due process, we think that the following language from Mr. Justice Cardozo's opinion is significant:

> "The Tariff Commission advises; these others ordain. There is indeed this common bond that all alike are instruments in a governmental process which according to the accepted classification is legislative, not judicial. . . . Whatever the appropriate label, the kind of order that emerges from a hearing before a body with power to ordain is one that impinges upon legal rights in a very different way from the report of a commission which merely investigates and advises. The traditionary forms of hearing appropriate to the one body are unknown to the other. What issues from the Tariff Commission as a report and recommendation to the President, may be accepted, modified, or rejected. If it happens to be accepted, it does not bear fruit in anything that trenches upon legal rights." 288 U. S., at 318.

And in referring to the traditional practice of investigating bodies, Mr. Justice Cardozo had this to say:

> "[W]ithin the meaning of this act the 'hearing' assured to one affected by a change of duty does not include a privilege to ransack the records of the Commission, and to subject its confidential agents to an examination as to all that they have learned. *There*

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> *was no thought to revolutionize the practice of investigating bodies generally and of this one in particular." Id.,* at 319. (Emphasis supplied.)

Thus, the purely investigative nature of the Commission's proceedings, the burden that the claimed rights would place upon those proceedings, and the traditional procedure of investigating agencies in general, leads us to conclude that the Commission's Rules of Procedure comport with the requirements of due process.[31]

Nor do the authorities cited by respondents support their position. They rely primarily upon *Morgan* v. *United States,* 304 U. S. 1; *Joint Anti-Fascist Refugee Comm.* v. *McGrath,* 341 U. S. 123; and *Greene* v. *McElroy, supra.* Those cases are all distinguishable in that the government agency involved in each was found by the Court to have made determinations in the nature of adjudications affecting legal rights. Thus, in *Morgan,* the action of the Secretary of Agriculture in fixing the maximum rates to be charged by market agencies at stockyards was challenged. In voiding the order of the Secretary for his failure to conduct a trial-like hearing, the Court referred to the adjudicatory nature of the proceeding:

> "Congress, in requiring a 'full hearing,' had regard to judicial standards,—not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature." 304 U. S., at 19.

[31] The Commission cites *In re Groban,* 352 U. S. 330, and *Anonymous* v. *Baker,* 360 U. S. 287, in support of its position. Each of us who participated in those cases adheres to the view to which he subscribed therein. However, because there are significant differences between the *Groban* and *Anonymous* cases and the instant litigation, and because the result we reach today is supported by the other considerations analyzed herein, the Court does not find it necessary to discuss either of those cases.

Likewise, in *Joint Anti-Fascist Refugee Comm.* v. *McGrath*, 341 U. S. 123, 140–141, this Court held that the Attorney General's action constituted an adjudication. Finally, our decision last year in *Greene* v. *McElroy* lends little support to the respondents' position. The governmental action there reviewed was certainly of a judicial nature. The various Security Clearance Boards involved in *Greene* were not conducting an investigation; they were determining whether Greene could have a security clearance—a license in a real sense, and one that had a significant impact upon his employment. By contrast, the Civil Rights Commission does not make any binding orders or issue "clearances" or licenses having legal effect. Rather, it investigates and reports leaving affirmative action, if there is to be any, to other governmental agencies where there must be action *de novo*.

The respondents have also contended that the Civil Rights Act of 1957 is inappropriate legislation under the Fifteenth Amendment. We have considered this argument, and we find it to be without merit. It would unduly lengthen this opinion to add anything to the District Court's disposition of this claim. See 177 F. Supp., at 819–821.

Respondents' final argument is that the Commission's hearings should be governed by Section 7 of the Administrative Procedure Act, 60 Stat. 241, 5 U. S. C. § 1006, which specifies the hearing procedures to be used by agencies falling within the coverage of the Act. One of those procedures is the right of every party to conduct "such cross-examination as may be required for a full and true disclosure of the facts." However, what the respondents fail to recognize is that Section 7, by its terms, applies only to proceedings under Section 4, 60 Stat. 238, 5 U. S. C. § 1003 (rule making), and Section 5, 60 Stat.

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239, 5 U. S. C. § 1004 (adjudications), of the Act. As we have already indicated, the Civil Rights Commission performs none of the functions specified in those sections.

From what we have said, it is obvious that the District Court erred in both cases in enjoining the Commission from holding its Shreveport hearing. The court's judgments are accordingly reversed, and the cases are remanded with direction to vacate the injunctions.

Reversed and remanded.

[Footnotes at end of table]

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Executive and Administrative Agencies[2] Atomic Energy Commission	The Commission is authorized to "make such studies and investigations, . . . and hold such meetings or hearings as . . . [it] may deem necessary or proper to assist it in exercising" any of its statutory functions. 68 Stat. 948, 42 U.S.C. § 2201 (c).	The Commission may subpoena any person to appear and testify or produce documents "at any designated place." 68 Stat. 948, 42 U. S. C. § 2201 (c).

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OF THE COURT [1]

[Footnotes at end of table]

The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This is not specified by statute. The Commission's Rules of Practice provide that "the procedure to be followed in informal hearings shall be such as will best serve the purpose of the hearing." 10 CFR § 2.720. The Rules of Practice do not require any specific type of notice to be given in informal hearings. *Ibid.*	This is not specified by statute. The Commission's Rules of Practice do not require that those summoned to appear before informal hearings be given the right to cross-examine other witnesses. Rather, the Commission is given the discretion to adopt those procedures which "will best serve the purpose of the hearing." 10 CFR § 2.720.	The Commission's Rules of Practice draw a sharp distinction between informal and formal hearings. Formal hearings are used only in "cases of adjudication," 10 CFR § 2.708, and parties to the hearings are given detailed notice of the subject of the hearing, *id.*, § 2.735, as well as the right to cross-examine witnesses, *id.*, § 2.747. Informal hearings are used in investigations "for the purposes of obtaining necessary or useful information, and affording participation by interested persons, in the formulation, amendment, or rescission of rules and regulations." *Id.*, § 2.708. The safeguards which are accorded in the formal, adjudicative hearings are not mentioned in the Commission's Rule relating to informal hearings. *Id.*, § 2.720.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Federal Comunications Commission.	(1) The Commission is authorized to investigate any matters contained in a complaint "in such manner and by such means as it shall deem proper." 48 Stat. 1073, 47 U. S. C. § 208. (2) The Federal Communications Commission was also authorized to conduct a special investigation of the American Telephone and Telegraph Company, and to obtain information concerning the company's history and structure, the services rendered by it, its failure to reduce rates, the effect of monopolistic control on the company, the methods of competition engaged in by the company, and the company's attempts to influence public opinion by the use of propaganda. 49 Stat. 43.	(1) The Commission may "subpena the attendance and testimony of witnesses and the production of all books, papers, schedules of charges, contracts, agreements, and documents relating to any matter under investigation." 48 Stat. 1096, 47 U. S. C. § 409 (e). (2) The Commission was also given the subpoena power by the statute authorizing the investigation of the American Telephone and Telegraph Company. 49 Stat. 45.
Federal Trade Commission.	(1) The Commission is authorized to investigate "the organization, business, conduct, practices, and management of any corporation engaged in commerce"; to make an investigation of the manner in which antitrust decrees are being carried out; to investigate and report the facts relating to any alleged violations of the anti-	(1) The Commission may "subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation." 38

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This is not specified by statute. The Commission's Rules of Practice do not specify the type of notice to be given in investigative proceedings. However, the Rules do provide that the "procedures to be followed by the Commission shall, unless specifically prescribed . . . [in the Rules], be such as in the opinion of the Commission will best serve the purposes of . . . [any investigative] proceeding." 47 CFR § 1.10.	This is not specified by statute. Nor do the Commission's Rules of Practice refer to cross-examination in investigative proceedings. Therefore, whether persons appearing at an investigation have the privilege of cross-examining witnesses apparently depends upon whether the Commission is of the opinion that cross-examination "will best serve the purpose of such proceeding." 47 CFR § 1.10. It should also be noted that even in that portion of the Commission's Rules relating to adjudications and rulemaking proceedings, there is no specific provision relating to cross-examination. *Id.*, §§ 1.101–1.193.	It should be noted that the Commission's Report on the Telephone Investigation made no mention of the type of notice, if any, given to those summoned to appear at the investigation. Nor was there any reference to cross-examination. The Commission did permit the Company "to submit statements in writing pointing out any inaccuracies in factual data or statistics in the reports introduced in the hearings or in any testimony in connection therewith, provided that such statements were confined to the presentation of facts and that no attempt would be made therein to draw conclusions therefrom." H. R. Doc. No. 340, 76th Cong., 1st Sess. xviii.
(1) This is not specified by statute. The Commission's Rules of Practice provide that "any party under investigation compelled to furnish information or documentary evidence shall be advised with respect to	(1) This is not specified by statute. The Commission's Rules of Practice provide that a person required to testify in an investigative proceeding "may be accompanied and advised by counsel, but	(1) It is interesting to note that the Commission's Rules of Practice draw an express and sharp distinction between investigative and adjudicative proceedings, and that the Commission's Rules relating to notice and

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Federal Trade Commission—Continued	trust Acts by any corporation; and "to investigate . . . trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States." 38 Stat. 721–722, 15 U.S.C. § 46. (2) The Commission was also authorized to conduct a special investigation of the motor vehicle industry to determine (a) "the extent of concentration of control and of monopoly in the manufacturing, warehousing, distribution, and sale of automobiles, accessories, and parts, including methods and devices used by manufacturers for obtaining and maintaining their control or monopoly, . . . and the extent, if any, to which fraudulent, dishonest, unfair, and injurious methods . . . [were] employed, including combinations, monopolies, price fixing, or unfair trade practices"; and (b) "the extent to which any of the antitrust laws of the United States . . . [were] being violated." 52 Stat. 218.	Stat. 722, 15 U.S.C. § 49. (2) The Commission was also given the subpoena power under the statute authorizing the investigation of the motor vehicle industry. 52 Stat. 218.

The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
the purpose and scope of the investigation." 16 CFR, 1959 Supp., § 1.33. (2) The Commission's Report on the Motor Vehicle Industry did not indicate what type of notice, if any, was given to those summoned to testify at the investigation. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.	counsel may not, as a matter of right, otherwise participate in the investigation." 16 CFR, 1959 Supp., § 1.40. Moreover, while the Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings, see *id.*, § 1.31–1.42, such a right is specifically given to parties in an adjudicative proceeding. *Id.*, § 3.16. (2) The Commission's Report on the Motor Vehicle Industry did not refer to cross-examination. H.R. Doc. No. 468, 76th Cong., 1st Sess. Presumably, the Commission's regular Rules of Practice obtained.	cross-examination in investigative proceedings are very similar to those adopted by the Civil Rights Commission. (2) It should also be observed that FTC investigations may be initiated "upon complaint by members of the consuming public, businessmen, or the concerns aggrieved by unfair practices," 16 CFR, 1959 Supp., § 1.11, and that complaints received by the Commission may charge "any violation of the law over which the Commission has jurisdiction." *Id.*, § 1.12. (3) Also relevant to our inquiry is the fact that the Commission does not "publish or divulge the name of an applicant or complaining party." *Id.*, § 1.15. (4) Finally, it is important to observe that the FTC, unlike the Civil Rights Commission, has the authority to commence adjudicative proceedings based upon the material obtained by means of investigative proceedings. *Id.*, § 1.42.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
National Labor Relations Board.	Under the National Labor-Management Relations Act, the Board is given the power to investigate petitions and charges submitted to it relating to union representation and unfair labor practices. 61 Stat. 144, 149, 29 U. S. C. §§ 159 (c), 160 (l).	"For the purpose of all hearings and investigations, . . . the Board [may] . . . copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation," and it may also issue subpoenas requiring the attendance and testimony of witnesses in any proceeding or investigation. 61 Stat. 150, 29 U. S. C. § 161.
Securities and Exchange Commission.	(1) Under the Securities Act of 1933, as amended, the Commission is authorized to conduct "all investigations which, . . . are necessary and proper for the enforcement of" the Act. 48 Stat. 85, 15 U. S. C. § 77s(b). (2) The Securities and Exchange Act of 1934 authorizes the Commission to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provisions of . . . [the Act] or any rule or regulation thereunder." 48 Stat. 899, 15 U. S. C. § 78u (a). (3) The Public Utility Holding Company Act of 1937 empowers the Commission to "investigate any facts, condi-	All of the Acts which authorize the Commission to conduct investigations also bestow upon it the power to subpoena witnesses, compel their attendance, and require the production of any books, correspondence, memoranda, contracts, agreements, and other records which are relevant to the investigation. Securities Act of 1933, 48 Stat. 85, 15 U. S. C. § 77s (b); Securi-

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The type of notice required to be given in investigative proceedings.[3]	The right if any of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the preliminary investigation of all petitions and charges received by the Board. However, there is no specific rule regarding notice of the preliminary investigation. See 29 CFR, 1960 Supp., §§101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.	This is not specified by statute. The Board's Statements of Procedure and Rules and Regulations provide for the right to cross-examine witnesses at formal, adjudicative hearings, 29 CFR, 1960 Supp., §§101.10, 102.38, 102.66, 102.86, 102.90, but there is no such provision with regard to preliminary investigations. *Id.*, §§101.4, 101.18, 101.22, 101.27, 101.32, 102.63, 102.77, 102.85.	It should be noted that the National Labor Relations Board may use the information collected during preliminary investigations to initiate adjudicative proceedings. 61 Stat. 149, 29 U. S. C. § 160 (l). The Commission on Civil Rights has no such power. Moreover, the Board, unlike the Civil Rights Commission, may use the information obtained by it through investigations to petition the federal courts for appropriate injunctive relief, 61 Stat. 149, 29 U. S. C. § 160 (l).
This is not specified by statute. Nor do the Commission's Rules of Practice relating to formal investigations make any mention of the type of notice which must be given in such proceedings. 17 CFR § 202.4. The Commission's Rules do provide for the giving of notice in adjudicative proceedings, *id.*, 1959 Supp., § 201.3, but this provision is made specifically inapplicable to investigative proceedings. *Id.*, § 201.20.	This is not specified by statute. The Commission's Rules of Practice make no mention of the right to cross-examine witnesses in investigative proceedings. 17 CFR § 202.4. Parties are given the right to cross-examine witnesses in adjudicative proceedings, *id.*, § 201.5, but this provision is made specifically inapplicable to investigative proceedings. *Id.*, § 201.20.	The Securities and Exchange Commission's procedures for investigative proceedings are very similar to those of the Civil Rights Commission. Investigations may be initiated upon complaints received from members of the public, and these complaints may contain specific charges of illegal conduct. 17 CFR § 202.4. It should be noted, however, that the Securities and Exchange Commission, unlike the Civil

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Securities and Exchange Commission—Con.	tions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of . . . [the Act] or any rule or regulation thereunder, or to aid in the enforcement of the provisions of . . . [the Act], in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which . . . [the Act] relates." 49 Stat. 831, 15 U. S. C. § 79r (a). (4) The Trust Indenture Act of 1939 authorizes the Commission to conduct "any investigation . . . which . . . is necessary and proper for the enforcement of" the Act. 53 Stat. 1174, 15 U. S. C. § 77uuu (a). (5) The Investment Company Act of 1940 gives the Commission the power to "make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of . . . [the Act] or of any rule, regulation, or order thereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under . . . [the Act] against a particular person or persons, or with respect to a particular person or persons, or with respect to a particular transaction or transactions." 54 Stat. 842, 15 U. S. C. § 80a–41 (a). (6) Finally, under the Investment Advisers Act of 1940, the Commission is authorized to determine by investigation	ties and Exchange Act of 1934, 48 Stat. 900, 15 U. S. C. § 78u (b); Public Utility Holding Company Act of 1935, 49 Stat. 831, 15 U. S. C. § 79r (c); Trust Indenture Act of 1939, 53 Stat. 1174, 15 U. S. C. § 77uuu (a); Investment Company Act of 1940, 54 Stat. 842, 15 U. S. C. § 80a–41 (b); Investment Advisers Act of 1940, 54 Stat. 853, 15 U. S. C. § 80b–9 (b).

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
		Rights Commission, is an adjudicatory body, and it may use the information gathered through investigative proceedings to initiate "administrative proceedings looking to the imposition of remedial sanctions, . . . (or) injunction proceedings in the courts, and, in the case of a willful violation," it may refer the "matter to the Department of Justice for criminal prosecution." *Ibid.* See also Securities Act of 1933, 48 Stat. 86, 15 U. S. C. § 77t (b); Securities and Exchange Act of 1934, 48 Stat. 900, 15 U. S. C. § 78u (e); Public Utility Holding Company Act of 1935, 49 Stat. 832, 15 U. S. C. § 79r (f); Investment Company Act of 1940, 54 Stat. 843, 15 U. S. C. § 80a–41 (e); Investment Advisers Act of 1940, 54 Stat. 854, 15 U. S. C. § 80b–9 (e).

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Securities and Exchange Commission—Con.	whether "the provisions of . . . [the Act] or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person." 54 Stat. 853, 15 U. S. C. § 80b–9 (a).	
Office of Price Stabilization.[5]	The Defense Production Act of 1950 authorized the President "to issue regulations and orders establishing a ceiling or ceilings on the price, rental, commission, margin, rate, fee, charge, or allowance paid or received on the sale or delivery, or the purchase or receipt, by or to any person, of any material or service, and at the same time . . . issue regulations and orders stabilizing wages, salaries, and other compensation in accordance with provisions of" the Act. 64 Stat. 803. This authority was delegated to the Economic Stabilization Administrator by Exec. Order No. 10161, 15 Fed. Reg. 6105. The Administrator in turn delegated the duty of issuing price regulations to the Office of Price Stabilization. Gen. Order No. 2 of the Economic Stabilization Agency, 16 Fed. Reg. 738. Pursuant to this authority, the Office of Price Stabilization promulgated Rules of Procedure, Section 2 of which provided that investigations would be held before the issuance of a ceiling price regulation. Price Procedural Regulation 1—General Price Procedures, § 2, 17 Fed. Reg. 3788.	The Defense Production Act of 1950 conferred upon the President the power, "by supena or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of . . . [the] Act and the regulations or orders issued thereunder." 64 Stat. 816. This power was delegated to the Office of Price Stabilization by Exec. Order No. 10161, 15 Fed. Reg. 6105; Gen. Order No. 2 of the Economic Stabilization Agency, 16 Fed. Reg. 738.

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This was not specified by statute or Executive Order. The Office's Rules of Procedure provided that a general public notice was to be given in the Federal Register of all pre-issuance hearings. Price Procedural Regulation 1—General Price Procedures, § 4, 17 Fed. Reg. 3788.	This was not specified by statute or Executive Order. Nor did the Office's Rules of Procedure make any mention of the right to cross-examine witnesses appearing at pre-issuance hearings. The Rules merely said that the hearing was to "be conducted in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of the evidence by such persons as are, in the judgment of the Director, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." Price Procedural Regulation 1—General Price Procedures, § 5, 17 Fed. Reg. 3788.	It should be noticed that the Office's pre-issuance hearings usually led to determinations which had severe effects upon certain individuals; yet, there was no provision for personalized, detailed notice or cross-examination.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Office of Price Administration. [6]	The Administrator was "authorized to make such studies and investigations and to obtain such information as he . . . [deemed] necessary or proper to assist him in prescribing any regulation or order under . . . [the] Act, or in the administration and enforcement of . . . [the] Act and regulations, orders, and price schedules thereunder." 56 Stat. 30.	"For the purpose of obtaining any information [in an investigation] . . . the Administrator . . . [could] by subpena require any . . . person to appear and testify or to appear and produce documents, or both, at any designated place." 56 Stat. 30.
The Department of Agriculture	(1) Under the Perishable Agricultural Commodities Act of 1930, the Department is authorized to investigate any complaint filed with the Secretary alleging that someone has violated the Act. 46 Stat. 534, 7 U. S. C. § 499f(c). (2) The Department also enforces the Packers and Stock-	(1) The Perishable Agricultural Commodities Act of 1930 authorizes the Secretary to "require by subpoena the attendance and testimony of witnesses and the produc-

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This was not specified by statute. The Administrator's Rules of Procedure did not specify the type of notice, if any, to be given during the investigative stage of price regulation proceedings. 32 CFR, 1944 Supp., § 1300.2. After the investigation, the Administrator could hold a price hearing prior to issuance of the regulation, and general notice of the hearing was to be published in the Federal Register. *Id.*, § 1300.4.	This was not specified by statute. The Administrator's Rules of Procedure made no mention of the right to cross-examine witnesses during either investigations or pre-issuance hearings. 32 CFR, 1944 Supp., §§ 1300.2, 1300.5. The Rules merely provided that hearings were to be conducted "in such manner, consistent with the need for expeditious action, as will permit the fullest possible presentation of evidence by such persons as are, in the judgment of the Administrator, best qualified to provide information with respect to matters considered at the hearing or most likely to be seriously affected by action which may be taken as a result of the hearing." *Id.*, § 1300.5.	It should be noted that even though the Administrator's proceedings smacked of an adjudication, there was no express requirement that either detailed notice or the right to cross-examine witnesses be given to parties affected by the Administrator's actions.
This is not specified by statue. The Department's Rules of Practice adopted pursuant to the Perishable Agricultural Commodities Act and the Packers and Stockyards Act do not refer to the type	This is not specified by statute. The Department's Rules of Practice adopted pursuant to the perishable Agricultural Commodities Act and the Packers and Stockyards Act contain no reference to	(1) The Department of Agriculture, unlike the Civil Rights Commission, may use the information obtained through investigations in its subsequent adjudicative proceedings under the Perishable Agriculture

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
The Department of Agriculture—Con.	yards Act of 1921, which, for the purposes of that Act, gives the Secretary the investigative and other enforcement powers possessed by the Federal Trade Commission, 42 Stat 168, 7 U. S. C. § 222. The Department's Rules of Practice also provide that investigations shall be conducted when informal complaints charging a violation of the Act are received by the Secretary. 9 CFR § 202.3.	tion of such accounts, records, and memoranda as may be material for the determination of any complaint under" the Act. 46 Stat. 536, 7 U. S. C. § 499m (b). (2) The Packers and Stockyards Act of 1921 gives to the Secretary those powers conferred upon the Federal Trade Commission by "sections 46 and 48–50 of Title 15." Among those powers is the authority to subpoena witnesses. 42 Stat. 168, 7 U. S. C. § 222.

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
of notice, if any, which must be given in investigative proceedings, 7 CFR § 47.3; 9 CFR § 202.3, although a specific right to notice is given in adjudicative proceedings. 7 CFR §§ 47.6, 47.27; 9 CFR §§ 202.6, 202.23, 202.39.	cross-examination during investigative proceedings, 7 CFR § 47.3; 9 CFR § 202.3, although such a right is given in the formal, adjudicative stage of the proceedings. 7 CFR §§ 47.15, 47.32; 9 CFR §§ 202.11, 202.29, 202.48.	Commodities Act. 7 CFR § 47.7. (2) It is also of interest that investigative proceedings under both the Perishable Agricultural Commodities Act and the Packers and Stockyards Act are commenced by the filing of complaints from private individuals. 7 CFR § 47.3; 9 CFR § 202.3. (3) Finally, it should be noted that the Department of Agriculture administers the Federal Seed Act, 53 Stat. 1275, 7 U. S. C. §§ 1551–1610, which makes it unlawful to engage in certain practices relating to the labeling and importation of seeds, and a statute regulating export standards for apples and pears, 48 Stat. 123, 7 U. S. C. §§ 581–589. The Rules of Practice adopted by the Secretary pursuant to statutory authorization provide that proceedings under these statutes shall be initiated by an investigation of the charges contained in any complaint received by the Secretary. These Rules make no mention of the type of notice, if any, given to those being investigated;

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
The Department of Agriculture—Con.		
Commodity Exchange Commission (Department of Agriculture)	The Commodity Exchange Act empowers the Secretary of Agriculture (acting through the Commission) to "make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior to or subsequent to the enactment of" the Act. The Secretary is also empowered to "investigate marketing conditions of commodity and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges." 42 Stat. 1003, as amended, 49 Stat. 1491, 7 U.S.C. § 12.	The Secretary of Agriculture (acting through the Commission) is given the same subpoena powers as are vested in the Interstate Commerce Commission by the Interstate Commerce Act, 24 Stat. 383, 27 Stat. 443, 32 Stat. 904, 34 Stat. 798, 49 U.S.C. §§ 12, 46–48. 42 Stat. 1002, as amended, 49 Stat. 1499, 69 Stat. 160, 7 U.S.C. § 15.
Food and Drug Administration (Department of Health, Education and Welfare).	The Regulations adopted pursuant to the Federal Caustic Poison Act, 44 Stat. 1406, 15 U.S.C. §§ 401–411, authorize the Administration to conduct investigations, 21 CFR § 285.15, and to hold preliminary hearings "whenever it appears . . . that the provisions of section 3 or 6 of the Caustic Poison Act . . . have been violated and criminal proceedings are contemplated. *Id.*, § 285.17.	The Act makes no provision for compelling testimony.

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
		nor is there any reference to cross-examination during the investigative stage of the proceedings. 7 CFR §§ 201.151, 33.17.
This is not specified by statute. The Commission has no special rules for investigations; however, its Rules of Practice provide that a private party may initiate a disciplinary proceeding by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the type of notice, if any, which must be given in investigative proceedings. 17 CFR § 0.53.	This is not specified by statute. The Commission has no special rules for investigations; however, its Rules of Practice provide that a private party may initiate a disciplinary proceeding by filing a complaint, and that an investigation of the complaint will be made. No mention is made of the right to cross-examine witnesses during investigative proceedings. 17 CFR § 0.53.	It is of interest to note that investigations may be initiated by complaints from private parties, and that the information obtained during investigations may be used in a subsequent adjudicative proceeding. 17 CFR § 0.53.
This is not specified by statute. The Administration's Regulations make no reference to notice of investigative proceedings, but they do require that general notice be given to those against whom prosecution is contemplated. 21 CFR § 285.17.	This is not specified by statute. The Administration's regulations make no mention of the right to cross-examine witnesses appearing at investigative proceedings or preliminary hearings. 21 CFR § 285.17.	It should be noted that the Administration investigates specific instances of possible unlawful activity, and that, unlike the Civil Rights Commission, the Secretary (acting through the Administration) is required to refer possible violations to the proper United States Attorney. 44 Stat. 1409, 15 U. S. C. § 409 (b).

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Presidential Commissions United States Tariff Commission	(1) The Commission is authorized "to investigate the administration and fiscal and industrial effects of the customs laws of this country, now in force or which may be hereafter enacted, the relations between the rates of duty on raw materials and finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, . . . the operation of customs laws, including their relation to the federal revenues, [and] their effect upon the industries and labor of the country." 46 Stat. 698, 19 U. S. C. § 1332 (a). (2) The Commission is also authorized "to investigate the tariff relations between the United States and foreign countries, commercial treaties, preferential provisions, economic alliances, the effect of export bounties and preferential transportation rates, the volume of importations compared with domestic production and consumption, and conditions, causes and effects relating to competition of foreign industries with those of the United States, including dumping and cost of production." 46 Stat. 698, 19 U. S. C. § 1332 (b). (3) The Commission may investigate "the Paris Economy Pact and similar organizations and arrangements in Europe." 46 Stat. 698, 19 U. S. C. § 1332 (c). (4) The Commission is empowered to "investigate the difference in the costs of pro-	The Commission may, "for the purposes of carrying out its functions and duties in connection with any investigation authorized by law, . . . (1) . . . have access to and the right to copy any document, paper, or record, pertinent to the subject matter under investigation, in the possession of any person, firm, copartnership, corporation, or association engaged in the production, importation, or distribution of any article under investigation, (2) . . . summon witnesses, take testimony, and administer oaths, (3) . . . require any firm, person, copartnership, corporation, or association to produce books or papers relating to any matter pertaining to such investigation, and (4) . . . require any person, firm, copartnership, corporation, or association, to furnish in writing, in such detail and in such form as the commission may prescribe, information in their possession pertain-

The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
Many of the statutory provisions authorizing the Commission to hold hearings pursuant to its investigatory power require that reasonable notice of prospective hearings be given. 46 Stat. 701, 19 U. S. C. § 1336 (a); 65 Stat. 72, 19 U. S. C. § 1360 (b)(1); 65 Stat. 74, 19 U. S. C. § 1364 (a); 49 Stat. 774, 7 U. S. C. § 624 (a). The Commission's Rules of Practice also provide that public notice of any pending investigation shall be given. 19 CFR, 1960 Supp., § 201.10.	This is not specified by statute. The Commission's Rules permit a party who has entered an appearance to question a witness "for the purpose of assisting the Commission in obtaining the material facts with respect to the subject matter of the investigation." 19 CFR § 201.14. However, all questioning is done under the direction of and subject to the limitations imposed by the Commission, and a person who has not entered a formal appearance may not, as a matter of right, question witnesses. *Ibid.* See also *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294.	(1) Since the Commission's investigative powers are generally exercised to aid the President in the execution of his duties under the Tariff Act, it is readily apparent that the Commission's investigations may have far reaching effects upon those persons affected by specific tariff regulations. (2) It should also be noted that business data given to the Commission may be classified as confidential, 19 CFR § 201.6, and that confidential material contained in applications for investigation and complaints will not be made available for public inspection. *Id.*, § 201.8.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
United States Tariff Commission—Con.	duction of any domestic article and of any like or similar foreign article." 46 Stat. 701, 19 U. S. C. § 1336 (a). (5) The Commission is authorized to investigate any complaint alleging that a person has engaged in unfair methods of competition or unfair acts in the importation of articles into the United States. 46 Stat. 703, 19 U. S. C. § 1337 (a), (b). (6) Before the President enters into negotiations concerning any proposed foreign trade agreement, the Commission is required to conduct an investigation and make a report to the President, indicating the type of agreement which will best carry out the purpose of the Tariff Act. 65 Stat. 72, 19 U. S. C. § 1360 (a). (7) The Commission is authorized to "make an investigation and make a report thereon . . . to determine whether any product upon which a concession has been granted under a trade agreement is, as a result, in whole or in part, of the duty or other customs treatment reflecting such concession, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic industry producing like or directly competitive products." 65 Stat. 74, 19 U.S.C.§ 1364(a). (8) The Commission is authorized to investigate the effects of dumping, and to determine whether because of such dumping, "an industry in the United States is being or is likely to be injured, or is prevented from being established." 42 Stat. 11, 19 U.S.C. § 160(a).	ing to such investigation." 46 Stat. 699, as amended, 72 Stat. 679, 19 U. S. C. § 1333 (a).

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
United States Tariff Commission—Con.	(9) Finally, the Commission is authorized to conduct investigations for the purpose of determining whether "any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under" the Agriculture Adjustment Act or the Soil Conservation and Domestic Allotment Act. 49 Stat. 773, as amended, 62 Stat. 1248, 7 U.S.C.§ 624 (a).	
Commission To Investigate the Japanese Attack on Hawaii.	The Commission was authorized to investigate the attack upon Pearl Harbor in order "to provide bases for sound decisions whether any derelictions of duty or errors of judgment on the part of the United States Army or Navy personnel contributed to such successes as were achieved by the enemy on the occasion mentioned, and if so, what these derelictions or errors were, and who were responsible therefor." Exec. Order No. 8983, 6 Fed. Reg. 6569.	The Commission was authorized "to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission." 55 Stat. 854.

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
Neither the Executive Order creating the Commission, Exec. Order No. 8983, 6 Fed. Reg. 6569, nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, required the Commission to inform prospective witnesses of complaints lodged against them.	Neither the Executive Order creating the Commission, Exec. Order No. 8983, 6 Fed. Reg. 6569, nor the joint resolution conferring the subpoena power upon the Commission, 55 Stat. 853, made any mention of the right to cross-examine witnesses. An examination of the Commission's proceedings does not disclose instances wherein any witness or party to the investigation was given the right to cross-examine other witnesses. In fact, such interested parties as Admiral Kimmel and General Short, the Navy and Army commanders at Pearl Harbor, were not even present at the hearings when other	It is of special interest that the Commission was charged with the responsibility of determining whether the successful attack upon Pearl Harbor resulted from any individual derelictions of duty. Yet, even though the Commission's investigation had all the earmarks of an adjudication, none of the procedural safeguards demanded by the respondents in these cases were provided.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Commission To Investigate the Japanese Attack on Hawaii—Continued		
Temporary National Economic Committee	The Committee was authorized to investigate "monopoly and the concentration of economic power in and financial control over production and disbribution of goods and services . . . with a view to determining . . . (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption, and (3) the effect of existing tax, patent, and other Government policies upon competition, price levels, unemployment, profits, and consumption." 52 Stat. 705.	The Committee was given the same subpoena powers as were conferred upon the Securities and Exchange Commission by the Public Utility Holding Company Act, 49 Stat. 831, 15 U. S. C. § 79r(c). 52 Stat. 706.
Congressional Investigating Committees[7] Senate Committee of Privileges (1800).	The Committee was authorized to conduct an investigation into charges that William Duane, a newspaper editor, had published articles defaming the Senate. 10 Annals of Cong. 117 (1800).	The Committee was authorized "to send for persons, papers, and records, and compel the attendance of witnesses which may become requisite for the execution of their commission." 10 Annals of Cong. 121 (1800).

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
	witnesses were testifying. Hearings of the Joint Congressional Committee on the Investigation of the Pearl Harbor Attack, 79th Cong., 1st Sess., pts. 22–25.	
This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings made no mention of the type of notice, if any, which was to be given to prospective witnesses. Hearings of the Temporary National Economic Committee, pt. 1. 193.	This was not specified by statute. The Rules of Procedure adopted by the Committee for the conduct of its hearings did not refer to cross-examination. There was merely a general statement that "in all examination of witnesses, the rules of evidence shall be observed but liberally construed." Hearings of the Temporary National Economic Committee, pt. 1, 193.	
This was not specified by the authorizing resolution. However, a subsequent resolution provided that Duane was to be informed of the charges against him when he presented himself at the bar of the Senate. 10 Annals of Cong. 117 (1800).	This was not specified by the authorizing resolution. The Senate later rejected a motion to permit Duane "to have assistance of counsel for his defense," but allowed him to be heard through counsel "in denial of any facts charged against [him] or in excuse and extenuation of his offence." 10 Annals of Cong. 118, 119 (1800).	It should be noted that this Committee was investigating the allegedly unlawful conduct of a specific individual; yet, it does not appear that he was given the right to cross-examine adverse witnesses.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Committee of the Senate to Investigate Whether Senator John Smith of Ohio Should Retain His Seat in the Senate (1807).	Senator Smith had been accused of conspiring with Aaron Burr to commit treason, and the Committee was established to investigate the charges and to inquire whether Senator Smith "should be permitted any longer to have a seat" in the Senate. 17 Annals of Cong. 40 (1807).	The authorizing resolution did not indicate whether the Committee had the subpoena power. 17 Annals of Cong. 40 (1807).
Joint Committee on the Conduct of the Civil War (1861).	(1) The Committee was established "to inquire into the conduct of the present [Civil] war." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861). (2) The Committee was also authorized "to inquire into the truth of the rumored slaughter of the Union troops, after their surrender, at the recent attack of the rebel forces upon Fort Pillow, Tennessee; as, [*sic*] also, whether Fort Pillow could have been sufficiently reenforced or evacuated, and if so, why it was not done." 13 Stat. 405.	The Committee had "the power to send for persons and papers." Cong. Globe, 37th Cong., 2d Sess. 32, 40 (1861).

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
This was not specified by the authorizing resolution. The Committee furnished Senator Smith with a description of the charges and evidence against him. Report of the Committee, 17 Annals of Cong. 56 (1807).	This was not specified by the authorizing resolution. Before the Committee, Senator Smith "claimed, as a right, to be heard in his defense by counsel, to have compulsory process for witnesses, and to be confronted with his accusers, as if the Committee had been a circuit court of the United States." Report of the Committee, 17 Annals of Cong. 56 (1807). However, the Committee rejected these claims on the ground that it was not a court, but rather a body whose function it was to investigate and report the facts relating to Senator Smith's conduct. *Ibid.*	Here again, it should be observed that the Committee was investigating the conduct of a particular individual, and that the Committee's findings could have had severe consequences on that individual.
This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were given no notice of the charges that had been leveled against them. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.	This was not specified by the authorizing resolution. Many of the generals whose conduct was being investigated were not given the right to be assisted by counsel or to cross-examine other witnesses. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.	It should be noted that the Committee's investigation frequently centered on the allegedly derelict conduct of specific individuals. Botterud, The Joint Committee on the Conduct of the Civil War (M.A. Thesis, Georgetown University, 1949), 42.

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
House Committee to Investigate the Electric Boat Company of New Jersey (1908).	The Committee was established to investigage charges that the Electric Boat Company of New Jersey had "been engaged in efforts to exert corrupting influence on certain Members of Congress in their legislative capacities, and . . . [had] in fact exerted such corrupting influence." H. R. Res. 288, 60th Cong., 1st Sess., 42 Cong. Rec. 2972.	The Committee had authority "to send for persons and papers." H. R. Res. 288, 60th Cong., 1st Sess., 42 Cong. Rec. 2972.
House Committee to Investigate Violations of the Antitrust Laws by the American Sugar Refining Co. (1911)	(1) The Committee was authorized to conduct an investigation "for the purpose of ascertaining whether or not there have been violations of the antitrust act of July 2, 1890, and the various acts supplementary thereto, by the American Sugar Refining Co.," and further, to "investigate the organization and operations of said American Sugar Refining Co., and its relations with other persons or corporations engaged in the business of manufacturing or refining sugar, and all other persons or corporations engaged in manufacturing or refining sugar and their relations with each other." H. R. Res., 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.	The Committee was authorized "to compel the attendance of witnesses, [and] to send for persons and papers." H. R. Res. 157, 62d Cong., 1st Sess., 47 Cong. Rec. 1143.
Senate Committee to Investigate Lobbying (1935–1936).	The Committee was authorized "to make a full and complete investigation of all lobbying activities and all efforts to influence, encourage, promote, or retard legislation, directly or indirectly in connection with the so-called 'holding company bill',	The Committee was authorized "to require by subpena or otherwise the attendance of such witnesses and the production of such

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The type of notice required to be given in investigative proceedings.[1]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[1]	Miscellaneous comments
This was not specified by the authorizing resolution. However, most of the charges which led to the investigation were made in public hearings before the Rules Committee of the House. H.R. Rep. No. 1168, 60th Cong., 1st Sess.	The questioning of all witnesses was conducted by the Committee, although the parties being investigated were permitted to submit written interrogatories for the Committee to propound to certain witnesses. H. R. Rep. No. 1727, 60th Cong., 1st Sess. 11.	It is of interest that the Committee was investigating specific charges of corruption leveled against named individuals.
This was not specified by the authorizing resolution. Nor was this specified by the Committee's Rules of Procedure.	This was not specified by the authorizing statute. The Committee's Rules of Procedure provided that "counsel may attend witnesses summoned before this committee, but may not participate in the proceedings, either by way of examination or argument, except upon permission given by the committee, from time to time, as the occasion arises." Hearings before the Committee on the Investigation of the American Sugar Refining Co., 62d Cong., 1st Sess. 3.	Once again, it should be noted that the Committee was established to investigate, among other things, possible violations of the law.
This was not specified by the authorizing resolution.	This was not specified by the authorizing resolution. The Committee adopted a rule that witnesses and their attorneys could not examine other wit-	

Agency	Scope of agency's investigative authority	Extent of agency's subpoena power in investigative proceedings
Senate Committee to Investigate Lobbying (1935–1936)—Con.	or any other matter or proposal affecting legislation." S. Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.	correspondence, books, papers, and documents . . . as it . . . [deemed] advisable." S. Res. 165, 74th Cong., 1st Sess., 79 Cong. Rec. 11003.

[1] This Appendix describes the Rules of Procedure governing the authorized investigative proceedings of a representative group of administrative agencies, executive departments, presidential commissions, and congressional committees. The Appendix does not purport to be a complete enumeration of the hundreds of agencies which have conducted investigations during the course of this country's history. Rather, it is designed to demonstrate that the procedures adopted by the Civil Rights Commission are similar to those which have traditionally been used by investigating agencies in both the executive and legislative branches of our Government.

[2] We have found many other administrative agencies and Presidential commissions empowered to conduct investigations and to subpoena witnesses. Those agencies are not listed in the body of this Appendix because we were unable to find an adequate description of the rules of procedure governing their investigative proceedings. However, it is significant that the statutes creating these agencies made no reference to apprisal or cross-examination in investigative proceedings. Among the agencies in this category are: (1) Bureau of Corporations in the Department of Commerce and Labor, 32 Stat. 827; (2) Commission on Industrial Relations, 37 Stat. 415; (3) The Railroad Labor Board, 41 Stat. 469; (4) The United States Coal Commission, 42 Stat. 1023; (5) The Investigation Commission established by the Railroad Retirement Act of 1935, 49 Stat. 972; (6) National Bituminous Coal Commission, 49 Stat. 991; (7) Wage and Hour Division of the Department of Labor, 52 Stat. 1061; (8) Board of Investigation to Investigate Various Modes of Transportation, 54 Stat. 952; (9) Commission on the Organization of the Executive Branch of the Government, 67 Stat. 142; (10) Commission on Intergovernmental Relations, 67 Stat. 145.

[3] If the relevant statute makes no reference to notice, this fact will be mentioned. The negative inference which may be drawn from the absence of any statutory requirement that notice be given is supported by the fact that, in a few instances, Congress has made specific provision for the giving of notice in investigative proceedings. See, *e.g.*, the statutes cited on pp. — *supra* requiring the United States Tariff Commission to give reasonable notice of any investigative hearing.

[4] If the relevant statute makes no reference to cross-examination, that fact will be mentioned because of the inference which may be drawn therefrom that Congress did not intend persons appearing at investigative hearings to cross-examine other witnesses. This inference

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The type of notice required to be given in investigative proceedings.[3]	The right, if any, of persons affected by an investigation to cross-examine others testifying at investigative proceedings.[4]	Miscellaneous comments
	nesses; however, they could submit written questions, which the Committee would consider propounding to other witnesses. Hearings before Special Senate Committee to Investigate Lobbying Activities, 74th Cong., 2d Sess. 1469.	

is strengthened by the fact that in a relatively few instances Congress has, for one reason or another, required that persons being investigated by a commission or agency be given the right to cross-examine other witnesses. See, *e.g.*, 49 Stat. 1381, which authorized the Bureau of Marine Inspection and Navigation to investigate the causes of marine casualties.

[5] The Office of Price Stabilization is now defunct, having been terminated by Exec. Order No. 10434, 18 Fed. Reg. 809.

[6] The Office of Price Administration is now defunct, its functions having been transferred to the Office of Temporary Controls by Exec. Order No. 9809, 11 Fed. Reg. 14281, which in turn was terminated by Exec. Order No. 9841, 12 Fed. Reg. 2645.

[7] In addition to the investigating committees listed in the body of the Appendix, we think mention should also be made of the contemporary standing committees of Congress. Most of these committees have rules very similar to those adopted by the Civil Rights Commission. The Rules of Procedure of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration are typical. Rule 17 of the Rules reads as follows:

"There shall be no direct or cross examination by counsel appearing for a witness. However, the counsel may submit in writing any question or questions he wishes propounded to his client or to any other witness. With consent of the majority of the Members of the Subcommittee present and voting, such question or questions shall be put to the witness by the Chairman, by a Member of the Subcommittee or by the Counsel of the Subcommittee either in the original form or in modified language. The decision of the Subcommittee as to the admissibility of questions submitted by counsel for a witness, as well as to their form, shall be final."

See also S. Rep. No. 2, 84th Cong., 1st Sess. 20; Hearings before the Subcommittee on Rules of the Senate Committee on Rules and Administration, on S. Res. 65, 146, 223, 249, 256, S. Con. Res. 11, and 86, 83d Cong., 2d Sess. 141–142, 344, 345, 374; Rules of Procedure of the Select Committee on Improper Activities in the Labor or Management Field, Rules 10 and 11. Reference has been made in the text, *supra*, pp. 16–18, to the House "fair play" rules, which govern the hearings of most House Committees, and which make no provision for cross-examination.

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SUPREME COURT OF THE UNITED STATES

Nos. 549 AND 550.—OCTOBER TERM, 1959.

John A. Hannah, et al., Appellants, 549 *v.* Margaret M. Larche, et al.	On Appeal From the United States District Court for the Western District of Louisiana.
John A. Hannah, et al., Petitioners, 550 *v.* J. A. H. Slawson, et al.	On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 20, 1960.]

MR. JUSTICE HARLAN, whom MR. JUSTICE CLARK joins, concurring.

In joining the Court's opinion, as I do, I desire to add that in my view the principles established by *In re Groban*, 352 U. S. 330, and *Anonymous* v. *Baker*, 360 U. S. 287, are dispositive of the issues herein in the Commission's favor.

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SUPREME COURT OF THE UNITED STATES

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John A. Hannah, et al., Petitioners, 550 *v.* J. A. H. Slawson, et al.	On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 20, 1960.]

MR. JUSTICE FRANKFURTER, concurring in the result.

The United States Commission on Civil Rights, in exercising powers granted to it by the Civil Rights Act of 1957 (71 Stat. 635, 42 U. S. C. § 1975c) scheduled a hearing to be held by it in Shreveport, Louisiana, on July 13, 1959. By these two actions judgments were sought to declare the proposed hearing illegal and to restrain the members of the Commission from holding it.

The rules of procedure formulated by the Commission amply rest on leave of Congress. I need add nothing on this phase of the case to the Court's opinion. While it is a most salutary doctrine of constitutional adjudication to give a statute even a strained construction to avoid facing a serious doubt of constitutionality "avoidance of a difficulty will not be pressed to the point of disingenuous evasion. Here the intention of the Congress is revealed too distinctly to permit us to ignore it because of mere misgivings as to power. The problem must be faced and answered." *Moore Ice Cream Co.* v. *Rose*, 289 U. S. 373, 379. I have no such misgivings in the situation

before us. I also agree with the Court's conclusion in rejecting the constitutional claims of the plaintiffs. In view, however, of divergences between the Court's analysis and mine of the specific issues before us, including the authoritative relevance of *In re Groban*, 352 U. S. 330, and *Anonymous No. 6* v. *Baker*, 360 U. S. 287, I state my reasons for agreement.

To conduct the Shreveport hearing on the basis of sworn allegations of wrong-doing by the plaintiffs, without submitting to them these allegations and disclosing the identities of the affiants, would, it is claimed, violate the Constitution. The issue thus raised turns exclusively on the application of the Due Process Clause of the Fifth Amendment. The Commission's hearings are not proceedings requiring a person to answer for an "infamous crime," which must be based on an indictment of a grand jury (Amendment V), nor are they "criminal prosecutions" giving an accused the rights defined by Amendment VI. Since due process is the constitutional axis on which decision must turn, our concern is not with absolutes, either of governmental power or of safeguards protecting individuals. Inquiry must be directed to the validity of the adjustment between these clashing interests—that of government and of the individual, respectively—in the procedural scheme devised by the Congress and the Commission. Whether the scheme satisfies those strivings for justice which due process guarantees, must be judged in the light of reason drawn from the considerations of fairness that reflect our traditions of legal and political thought, duly related to the public interest Congress sought to meet by this legislation as against the hazards or hardship to the individual that the Commission procedure would entail.

Barring rare lapses, this Court has not unduly confined those who have the responsibility of governing within a doctrinaire conception of "due process." The Court has

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been mindful of the manifold variety and perplexity of the tasks which the Constitution has vested in the legislative and executive branches of the Government by recognizing that what is unfair in one situation may be fair in another. Compare, for instance, *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, with *Ng Fund Ho* v. *White*, 259 U. S. 276, and see *Communications Comm'n* v. *WJR*, 337 U. S. 265, 275. Whether the procedure now questioned offends "the rudiments of fair play," *Chicago, M. & St. P. R. Co.* v. *Polt*, 232 U. S. 165, 168, is not to be tested by loose generalities or sentiments abstractly appealing. The precise nature of the interest alleged to be adversely affected or of the freedom of action claimed to be curtailed, the manner in which this is to be done and the reasons for doing it, the balance of individual hurt and the justifying public good—these and such like are the considerations, avowed or implicit, that determine the judicial judgment when appeal is made to "due process."

The proposed Shreveport hearing creates risks of harm to the plaintiffs. It is likewise true that, were the plaintiffs afforded the procedural rights they seek, they would have a greater opportunity to reduce these risks than will be theirs under the questioned rules of the Commission. Some charges touching the plaintiffs might be withdrawn or modified, if those making them knew that their identities and the content of their charges were to be revealed. By the safeguards they seek the plaintiffs might use the hearing as a forum for subjecting the charges against them to a scrutiny that might disprove them or, at least, establish that they are not incompatible with innocent conduct.

Were the Commission exercising an accusatory function, were its duty to find that named individuals were responsible for wrongful deprivation of voting rights and to advertise such finding or to serve as part of

the process of criminal prosecution, the rigorous protections relevant to criminal prosecutions might well be the controlling starting point for assessing the protection which the Commission's procedure provides. The objectives of the Commission on Civil Rights, the purpose of its creation, and its true functioning are quite otherwise. It is not charged with official judgment on individuals nor are its inquiries so directed. The purpose of its investigations is to develop facts upon which legislation may be based. As such, its investigations are directed to those concerns that are the normal impulse to legislation and the basis for it. To impose upon the Commission's investigations the safeguards appropriate to inquiries into individual blameworthiness would be to divert and frustrate its purpose. Its investigation would be turned into a forum for the litigation of individual culpability—matters which are not within the keeping of the Commission, with which it is not effectively equipped to deal, and which would deflect it from the purpose for which it was within its limited life established.

We would be shutting our eyes to actualities to be unmindful of the fact that it would dissuade sources of vitally relevant information from making that information known to the Commission, if the Commission were required to reveal its sources and subject them to cross-examination. This would not be a valid consideration for secrecy were the Commission charged with passing official incriminatory or even defamatory judgment on individuals. Since the Commission is merely an investigatorial arm of Congress, the narrow risk of unintended harm to the individual is outweighed by the legislative justification for permitting the Commission to be the critic and protector of the information given it. It would be wrong not to assume that the Commission will responsibly scrutinize the reliability of sworn allegations that are to serve as the basis for further investigation and that it will

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be rigorously vigilant to protect the fair name of those brought into question.

In appraising the constitutionally permissive investigative procedure claimed to subject individuals to incrimination or defamation without adequate opportunity for defense, a relevant distinction is between those proceedings which are preliminaries to official judgments on individuals and those, like the investigation of this Commission, charged with responsibility to gather information as a solid foundation for legislative action. Judgments by the Commission condemning or stigmatizing individuals are not called for. When official pronouncements on individuals purport to rest on evidence and investigation, it is right to demand that those so accused be given a full opportunity for their defense in such investigation, excepting, of course, grand jury investigations. The functions of that institution and its constitutional prerogatives are rooted in long centuries of Anglo-American history. On the other hand, to require the introduction of adversary contests relevant to determination of individual guilt into what is in effect a legislative investigation is bound to thwart it by turning it into a serious digression from its purpose.

The cases in which this Court has recently considered claims to procedural rights in investigative inquiries alleged to deal unfairly with the reputation of individuals or to incriminate them, have made clear that the fairness of their procedures is to be judged in light of the purpose of the inquiry, and, more particularly, whether its essential objective is official judgment on individuals under scrutiny. Such a case was *Greene* v. *McElroy*, 360 U. S. 474. There the inquiry was for the purpose of determining whether the security clearance of a particular person was to be revoked. A denial of clearance would shut him off from the opportunity of access to a wide field of employment. The Court concluded that serious consti-

tutional questions were raised by denial of the rights to confront accusatory witnesses and to have access to unfavorable reports on the basis of which the very livelihood of an individual would be gravely jeopardized. Again, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, presented a contrasting situation to the one before us. The Government there sought through the Attorney General to designate organizations as "Communist," thus furnishing grounds on which to discharge their members from Government employment. No notice was given of the charges against the organizations nor were they given an opportunity to establish the innocence of their aims and acts. It was well within the realities to say of what was under scrutiny in *Joint Anti-Fascist Refugee Committee* v. *McGrath* that "it would be blindness . . . not to recognize that in the conditions of our time such designation drastically restricts the organizations, if it does not proscribe them." 341 U. S. 161 (concurring opinion). And the procedure which was found constitutionally wanting in that case could be fairly characterized as action "to maim or decapitate, on the mere say-so of the Attorney General, an organization to all outward-seeming engaged in lawful objectives. . . ." *Ibid.* Nothing like such characterization can remotely be made regarding the procedure for the proposed inquiry of the Commission on Civil Rights.

Contrariwise, decisions arising under the Due Process Clause of the Fourteenth Amendment strongly support the constitutionality of what is here challenged, where the purposes were as here truly investigatorial. Thus, *In re Groban*, 352 U. S. 330, sustained inquiry by the Ohio State Fire Marshal into the causes of a fire while excluding counsel of subpoenaed witnesses on whose premises the fire occurred. The Court so held even though the Fire Marshal had authority, after questioning a witness,

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to arrest him if he believed there was sufficient evidence to charge him with arson. The guiding consideration was that although suspects might be discovered, the essential purpose of the Fire Marshal's inquiry was not to adjudicate individual responsibility for the fire but to pursue a legislative policy of fire prevention through the discovery of the origins of fires. This decision was applied in *Anonymous No. 6* v. *Baker*, 360 U. S. 287, which concerned "a state judicial Inquiry into alleged improper practices at the local bar" (at p. 288). Rejecting the claim based on the consideration that the inquiry might serve as a groundwork for the prosecution of witnesses called before it, the Court applied *Groban* because the inquiry was a general one and appellants were before it not as potential accused but "solely as witnesses." The proposed investigation of the Commission on Civil Rights is much less likely to result in prosecution of witnesses before it than were the investigations in *Groban* and *Baker*. Just as surely, there is not present in the cases now before us a drastic official judgment, as in *Greene* and *Joint Anti-Fascist Refugee Committee*, where the Court deemed it necessary to insure that full opportunity for defense be accorded to individuals who were the specific, adverse targets of the secret process.

Moreover, the limited, investigatorial scope of the challenged hearing is carefully hedged in with protections for the plaintiffs. They will have the right to be accompanied by counsel. The rules insure that they will be made aware of the subject of the hearings. They will have the right to appeal to the Commission's power to subpoena additional witnesses. The rules significantly direct the Commission to abstain from public exposure by taking in executive session any evidence or testimony tending "to defame, degrade or incriminate any person." A person so affected is given the right to read such evidence and to

reply to it. These detailed provisions are obviously designed as safeguards against injury to persons who appear in public hearings before the Commission. The provision for screening defamatory and incriminatory testimony in order to keep it from the public may well be contrasted with the procedure in the *Joint Anti-Fascist* case where the very purpose of the inquiry was to make an official judgment that certain organizations were "Communist." Such condemnation of an organization would of course taint its members. The rules of the Commission manifest a sense of its responsibility in carrying out the limited investigatorial task confided to it. It is not a constitutional requirement that the Commission be argumentatively turned into a forum for trial of the truth of particular allegations of denial of voting rights in order thereby to invalidate its functioning. Such an inadmissible transformation of the Commission's function is in essence what is involved in the claims of the plaintiffs. Congress has entrusted the Commission with a very different role—that of investigating and appraising general conditions and reporting them to Congress so as to inform the legislative judgment. Resort to a legislative commission as a vehicle for proposing well-founded legislation and recommending its passage to Congress has ample precedent.

Finally it should be noted that arguments directed either at the assumed novelty of employing the Commission in the area of legislative interest which led Congress to its establishment, or at the fact that the source of the Commission's procedures were those long used by Committees of Congress, are not particularly relevant. History may satisfy constitutionality, but constitutionality need not produce the title-deeds of history. Mere age may establish due process, but due process does not preclude new ends of government or new means for achieving

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them. Since the Commission has, within its legislative framework, provided procedural safeguards appropriate to its proper function, claims of unfairness offending due process fall. The proposed Shreveport hearing fully comports with the Constitution and the law. Accordingly I join the judgment of the Court in reversing the District Court.

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SUPREME COURT OF THE UNITED STATES

Nos. 549 AND 550.—OCTOBER TERM, 1959.

John A. Hannah, et al., Appellants, 549 *v.* Margaret M. Larche, et al.	On Appeal From the United States District Court for the Western District of Louisiana.
John A. Hannah, et al., Petitioners, 550 *v.* J. A. H. Slawson, et al.	On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 20, 1960.]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

With great deference to my Brethren I dissent from a reversal of these judgments.

The cause which the majority opinion serves is, on the surface, one which a person dedicated to constitutional principles could not question. At the bottom of this controversy is the right to vote protected by the Fifteenth Amendment. That Amendment withholds power from either the States or the United States to deny or abridge the right to vote "on account of race, color, or previous condition of servitude." This right stands beyond the reach of government. Only voting qualifications that conform to the standards proscribed by the Fifteenth Amendment may be prescribed. *See Lassiter* v. *Northampton Election Board*, 360 U. S. 45. As stated in *Terry* v. *Adams*, 345 U. S. 461, 468, "The Amendment, the Congressional enactment and the cases make explicit the rule against racial discrimination in the conduct of elections." By democratic values this right is fundamental, for the very existence of government dedicated to the concept "of the people, by the people, for the people," to use Lincoln's words, depends on the franchise.

Yet important as these civil rights are, it will not do to sacrifice other civil rights in order to protect them. We live and work under a Constitution. The temptations of many men of goodwill is to cut corners, take short cuts, and reach the desired end regardless of the means. Worthy as I think the ends are which the Civil Rights Commission advances in these cases, I think the particular means used are unconstitutional.

The Commission, created by Congress, is a part of "the executive branch" of the Government, 71 Stat. 634, 42 U. S. C. § 1975 (a), whose members are appointed by the President and confirmed by the Senate. § 1975 (a). It is given broad powers of investigation with the view of making a report with "findings and recommendations" to the Congress. § 1975c. It is empowered, among other things, to

> "investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based." § 1975c (a)(1).

Complaints have been filed with the Commission charging respondents, who are registrars of voters in Louisiana, with depriving persons of their voting rights by reason of their color. If these charges are true and if the registrars acted willfully (see *Screws* v. *United States*, 325 U. S. 91), the registrars are criminally responsible under a federal statute which subjects to fine and imprisonment [1] anyone who willfully deprives a citizen of any right under

[1] Civil suits for damages are also authorized. See 42 U. S. C. § 1983; *Lane* v. *Wilson*, 307 U. S. 268.

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the Constitution "by reason of his color, or race."[2] 18 U. S. C. § 242.

The investigation and hearing by the Commission are therefore necessarily aimed at determining if this criminal law has been violated. The serious and incriminating nature of the charge and the disclosure of facts concerning it are recognized by the Congress, for the Act requires certain protective procedures to be adopted where defamatory, degrading, or incriminating evidence may be adduced.

> "If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses." 42 U. S. C. § 1975 (a)(e).

Yet these safeguards, given as a matter of grace, do not in my judgment dispose of the constitutional difficulty. First, it is the Commission's judgment, not the suspect's, that determines whether the hearing shall be secret or public. Thus this procedure has one of the evils protested against in *In re Groban*, 352 U. S. 330, 337, 348–353 (dissenting opinion). The secrecy of the inquisition only underlines its inherent vices: "Secret inquisitions are dangerous things justly feared by free men every-

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[2] The section reads in relevant part as follows:

"Whoever, under color of law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States . . . by reason of his color, or race . . . shall be fined not more than $1,000.00 or imprisoned not more than one year, or both."

where. They are the breeding place for arbitrary misuse of official power. They are often the beginning of tyranny as well as indispensable instruments for its survival. Modern as well as ancient history bears witness that both innocent and guilty have been seized by officers of the state and whisked away for secret interrogation or worse until the groundwork has been securely laid for their inevitable conviction." *Id.*, at 352–353. As said in dissent in *Anonymous* v. *Baker*, 360 U. S. 287, 299, "secretly compelled testimony does not lose its highly dangerous potentialities merely because" it is taken in preliminary proceedings. Second, the procedure seems to me patently unconstitutional whether the hearing is public or secret. Under the Commission's rules the accused is deprived of the right to notice of the charges against him and the opportunity of cross-examination. This statutory provision, fashioned to protect witnesses as such rather than a prospective defendant, permits the Commission to exclude the accused entirely from the hearing and deny him the opportunity even to observe the testimony of his accusers. And even if the Commission were inclined in a particular case to protect the accused from the opprobrium likely to flow from the testimony of individual witnesses against him by holding secret sessions, this would be little comfort after the Commission's findings, based on such untested evidence, were publicized across the Nation.

I assume that no court would be justified in enjoining a Congressional Committee composed of Senators or Congressmen that engaged in this kind of conduct. This is not that kind of a committee. Moreover, even if it were and if private rights were infringed by reason of the Committee's violations of the Constitution, there are circumstances when redress can be had in the courts. *Kilbourn* v. *Thompson*, 103 U. S. 168. Cf. *Greenfield* v. *Russel*, 292 Ill. 392; *Opinion of the Justices*, 96 N. H. 530.

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The judiciary also becomes implicated when the Congress asks the courts to back up what its Committees have done; or when a victim of an investigation asks relief from punishment imposed on him. Then the procedural safeguards of the Bill of Rights come into full play. See *Watkins* v. *United States*, 354 U. S. 178.

The Civil Rights Commission, however, is not a Congressional Committee of Senators or Congressmen; nor is it an arm of Congress. It is an arm of the Executive. There is, in my view, only one way the Chief Executive may move against a person accused of a crime and deny him the right of confrontation and cross-examination and that is by the grand jury.

The grand jury is the accusatory body in federal law as provided by the Fifth Amendment. The essence of the institution of the grand jury was stated by 1 Stephen, Hist. Criminal Law in England, 252: "The body of the country are the accusers." Thomas Erskine stated the matter accurately and eloquently in *Jones* v. *Shipley*, 21 How. St. Tr. 847, 978.

> "[I]t is unnecessary to remind your lordships, that, in a civil case, the party who conceives himself aggrieved, states his complaint to the court,—avails himself at his own pleasure of its process,—compels an answer from the defendant by its authority,—or taking the charge *pro confesso* against him on his default, is entitled to final judgment and execution for his debt, without any interposition of a jury. But in criminal cases it is otherwise; the court has no cognizance of them, without leave from the people forming a grand inquest. If a man were to commit a capital offence in the face of all the judges of England, their united authority could not put him upon his trial:—they could file no complaint against him, even upon the records of the supreme criminal court, but could only commit him for safe custody,

> which is equally competent to every common justice of the peace:—the grand jury alone could arraign him, and in their discretion might likewise finally discharge him, by throwing out the bill, with the names of all your lordships as witnesses on the back of it. If it shall be said, that this exclusive power of the grand jury does not extend to lesser misdemeanors, which may be prosecuted by information; I answer, that for that very reason it becomes doubly necessary to preserve the power of the other jury which is left."

This idea, though uttered in 1783, is modern and relevant here. The grand jury brings suspects before neighbors, not strangers. Just recently in *Stirone* v. *United States*, 361 U. S. 212, we said, "The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge."

This Commission has no such guarantee of fairness. Its members are not drawn from the neighborhood. The members cannot be as independent as grand juries because they meet not for one occasion only; they do a continuing job for the executive and, if history is a guide, tend to acquire a vested interest in that role.

The grand jury, adopted as a safeguard against "hasty, malicious and oppressive" action by the Federal Government, *Ex parte Bain*, 121 U. S. 1, 12, stands as an important safeguard to the citizen against open and public accusations of crime. Today the grand jury may act on its own volition, though originally specific charges by private prosecutors were the basis of its action. *Hale* v. *Henkel*, 201 U. S. 43, 59–60. It has broad investigational powers to look into what may be offensive against federal criminal law. *United States* v. *Johnson*, 319 U. S. 503,

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510. An indictment returned by a grand jury may not be challenged because it rests wholly on hearsay. *Costello* v. *United States,* 350 U. S. 359, 361–362. An accused is not entitled to a hearing before a grand jury, nor to present evidence, nor to be represented by counsel; and a grand jury may act secretly—a procedure normally abhorrent to due process. In this country as in England of old, the grand jury is convened as a body of laymen, free from technical rules, acting in secret, pledged to indict no one because of prejudice and to free no one because of special favor. *Costello* v. *United States, supra,* at 362.

Grand juries have their defects. They do not always return a true bill, for while the prejudices of the community may radiate through them, they also have the saving quality of being familiar with the people involved. They are the only accusatory body in the Federal Government that is recognized by the Constitution. I would allow no other engine of government, either executive or legislative, to take their place—at least when the right of confrontation and cross-examination are denied the accused as is done in these cases.

The might and power of the Federal Government have no equal. When its guns are leveled at a citizen on charges that he committed a federal crime, it is for me no answer to say that the only purpose is to report his activities to the President and Congress, not to turn him over to the District Attorney for prosecution. Our Constitution was drawn on the theory that there are certain things government may not do to the citizen and that there are other things that may be done only in a specific manner. The relationship of the Federal Government to a man charged with crime is carefully defined. Its power may be marshalled against him, but only in a defined way. When we allow this substitute method, we

make an innovation that does not comport with that due process which the Fifth Amendment requires of the Federal Government. When the Federal Government prepares to inquire into charges that a person has violated federal law, the Fifth Amendment tells us how it can proceed.

The Civil Rights Commission, it is true, returns no indictment. Yet in a real sense the hearings on charges that a registrar has committed a federal offense are a trial. Moreover, these hearings before the Commission may be televised or broadcast on the radio.[3] In our day we have seen Congressional Committees probing into alleged criminal conduct of witnesses appearing on the television screen. This is in reality a trial in which the whole Nation sits as a jury. Their verdict does not send men to prison. But it often condemns men or produces evidence to convict and even saturates the Nation with prejudice against an accused so that a fair trial may be impossible. As stated in 37 A. B. A. J. 392 (1951), "If several million television viewers see and hear a politician, a businessman or a movie actor subjected to searching interrogation, without ever having an opportunity to cross-examine his accusers or offer evidence in his own support, that man will stand convicted, or at least seriously compromised, in the public mind, whatever the later formal findings may be." The use of this procedure puts in jeopardy our traditional concept of the way men

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[3] The Rules of the Commission by Subdivision (k) provide:

"Subject to the physical limitations of the hearing room and consideration of the physical comfort of Commission members, staff, and witnesses, equal and reasonable access for coverage of the hearings shall be provided to the various means of communications, including newspapers, magazines, radio, news reels, and television. However, no witness shall be televised, filmed or photographed during the hearings if he objects on the ground of distraction, harassment, or physical handicap."

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should be tried and replaces it with "a new concept of guilt based on inquisitorial devices." Note, 26 Temp. L. Q. 70, 73.

Yet whether the hearing is televised or not it will have all the evils of a legislative trial. "A legislative trial," wrote Alan Barth in Government by Investigation (1955) p. 81, "is a device for condemning men without the formalities of due process." And he went on to say:

> "The legislative trial serves three distinct though related purposes: (1) it can be used to punish conduct which is not criminal; (2) it can be used to punish supposedly criminal conduct in the absence of evidence requisite to conviction in a court of law; and (3) it can be used to drive or trap persons suspected of 'disloyalty' into committing some collateral crime such as perjury or contempt of Congress, which can then be subjected to punishment through a judicial proceeding. 'It is hard to get them for their criminal activities in connection with espionage, but a way has been found,' Senator McCarthy once remarked. 'We are getting them for perjury and putting some of the worst of them away. For that reason I hope every witness who comes here is put under oath and his testimony is gone over with a fine-tooth comb, and if we cannot convict some of them for their disloyal activities, perhaps we can convict some of them for perjury.' That they may have been guilty of no violation of law in the first place seems of no concern to the Senator." *Id.*, at 83. And see Telford Taylor, Grand Inquest (1955).

Barth wrote of hearings in the so-called loyalty cases. But the reasons apply to any hearing where a person's job or liberty or reputation is at stake. Barth wrote of hearings held by Congressional Committees. Yet the evil is compounded where the "legislative trial" has become a

"Commission trial." And while I assume that a court would not enjoin the typical Congressional Committee, it is duty bound to keep commissions within limits, when its jurisdiction is properly invoked.

The right to know the claims asserted against one and to contest them—to be heard—to conduct a cross-examination—these are all implicit in our concept of "a full and fair hearing" before any administrative agency, as the Court in *Morgan* v. *United States*, 304 U. S. 1, 18, emphasized. We spoke there in the context of civil litigation where property was at stake. Here the need for all the protective devices of a fair hearing is greater. For one's job and perhaps his liberty are hinged on these hearings.

We spoke in the tradition of the *Morgan* case only recently in *Greene* v. *McElroy*, 360 U. S. 474, 496–497.

> "Certain principles have remained relatively immutable in our jurisprudence. *One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue.* While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has

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been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, . . . but also in all types of cases where administrative and regulatory actions were under scrutiny." (Italics added.)

We spoke there in a context where men were being deprived of their jobs as a result of investigations into their loyalty. Certainly no less is required if hearings are to be held on charges that a person has violated a federal law.

Respondents ask no more than the right to know the charges, to be confronted with the accuser, and to cross-examine him. Absent these rights, they ask for an injunction. In the *Greene* case we said these rights were available "where governmental action seriously injures an individual." 360 U. S., at 496. Injury is plain and obvious here—injury of a nature far more serious than merely losing one's job, as was the situation in the *Greene* case. If the hearings are to be without the safeguards which due process requires of all trials—civil and criminal—there is only one way I know by which the Federal Government may proceed and that is by grand jury. If these trials before the Commission are to be held on charges that these respondents are criminals, the least we can do is to allow them to know what they are being tried for, and to confront their accusers and to cross-examine them.[4] This protection would be extended to them in any

[4] Cf. Frankfurter, Hands Off the Investigations, New Republic, May 21, 1924, p. 329, at 331: "It must be remembered that our rules of evidence are but tools for ascertaining the truth, and that these tools vary with the nature of the issues and the nature of the tribunal seeking facts. Specifically, the system of rules of evidence used in trials before juries 'are mainly aimed at guarding the jury from the over-weening effect of certain kinds of evidence.' That system, as pointed out by Wigmore, 'is not applicable by historical precedent,

preliminary hearing, even in one before a United States Commissioner.[5] Confrontation and cross-examination are so basic to our concept of due process (*Peters* v. *Hobby*, 349 U. S. 331, 351–352 (concurring opinion)) that no proceeding by an administrative agency is a fair one that denies these rights.

References are made to federal statutes governing numerous administrative agencies such as the Federal Trade Commission and the Securities and Exchange Commission; and the inference is that what is done in this case can be done there. This comes as a surprise to one who for some years was engaged in those administrative investigations. No effort was ever made, so far as I am aware, to compel a person, charged with violating a federal law, to run the gantlet of a hearing over his objection. No objection based either on the ground now advanced nor on the Fifth Amendment was, so far as I know, ever overruled. Investigations were made; and they were searching. Such evidence of law violations as was obtained was turned over to the Department of Justice. But never before, I believe, has a federal executive agency attempted, over the objections of an accused, to force him through a hearing to determine whether he has violated a federal law. If it did, the action was lawless and courts should have granted relief.

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or by sound practical policy' to 'inquiries of fact determinable by administrative tribunals.' Still less is it applicable to inquiries by congressional committees. Of course the essential decencies must be observed, namely opportunity for cross-examination must be afforded to those who are investigated or to those representing issues under investigation."

[5] Rule 5 (b), Rules of Criminal Procedure, provides that the defendant shall be informed of the complaint against him and of his right to retain counsel. Rule 5 (c) expressly states, "The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf."

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What we do today is to allow under the head of due process a fragmentation of proceedings against accused people that seems to me to be foreign to our system. No indictment is returned, no commitment to jail is made, no formal criminal charges are made. Hence the procedure is condoned as violating no constitutional guarantee. Yet what is done is another shortcut used more and more these days to "try" men in ways not envisaged by the Constitution. The result is as damaging as summoning before committees men who it is known will invoke the Fifth Amendment and pillorying them for asserting their constitutional rights. This case—like the others—is a device to expose people as suspects or criminals. The concept of due process which permits the invention and use of prosecutorial devices not included in the Constitution makes due process reflect the subjective or even whimsical notions of a majority of this Court as from time-to-time constituted. Due process under the prevailing doctrine is what the judges say it is; and it differs from judge to judge, from court to court. This notion of due process makes it a tool of the activists who respond to their own visceral reactions in deciding what is fair, decent, or reasonable. This elastic concept of due process is described in the concurring opinion as follows:

> "Whether the scheme satisfies those strivings for justice which due process guarantees, must be judged in the light of reason drawn from the considerations of fairness that reflect our traditions of legal and political thought, duly related to the public interest Congress sought to meet by this legislation as against the hazards or hardship to the individual that the Commission procedure would entail."

When we turn to the cases, personal preference, not reason, seems, however, to be controlling.

Illustrative is the First Amendment protection given to the activities of a classroom teacher by the Due Process

Clause of the Fourteenth Amendment in *Sweezy* v. *New Hampshire*, 354 U. S. 234, 255, 261–263 (concurring opinion), but denied to the leader of an organization holding discussion groups at a summer camp in *Uphaus* v. *Wyman*, 360 U. S. 72; the decisions that due process was violated by the use of evidence obtained by the forceful use of a stomach pump in *Rochin* v. *California*, 342 U. S. 165, but not when evidence was used which was obtained by taking the blood of an unconscious prisoner. *Breithaupt* v. *Abram*, 352 U. S. 432.

It is said in defense of this chameleon-like due process that it is not "an exercise of whim or will," that it is "founded on something much deeper and more justifiable than personal preference. As far as it lies within human limitations, it must be an impersonal judgment. It must rest on fundamental presuppositions rooted in history to which widespread acceptance may be fairly attributed." *Sweezy* v. *New Hampshire*, *supra*, at 267 (concurring opinion). Yet one who tries to rationalize the cases on cold logic or reason fails. The answer turns on the personal predilections of the judge; and the louder the denial the more evident it is that emotion rather than reason dictates the answer. This is a serious price to pay for adopting a free-wheeling concept of due process, rather than confining it to the procedures and devices enumerated in the Constitution itself. See *Adamson* v. *California*, 332 U. S. 46, 68, 89 (dissenting opinion):

> "In my judgment the people of no nation can lose their liberty so long as a Bill of Rights like ours survives and its basic purposes are conscientiously interpreted, enforced and respected so as to afford continuous protection against old, as well as new, devices and practices which might thwart those purposes. I fear to see the consequences of the

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> Court's practice of substituting its own concepts of decency and fundamental justice for the language of the Bill of Rights as its point of departure in interpreting and enforcing that Bill of Rights."

That was written concerning the meaning of the Due Process Clause of the Fourteenth Amendment. But it has equal vitality when applied to the Due Process Clause of the Fifth Amendment with which we are now concerned.

I think due process is described in the Constitution and limited and circumscribed by it. The Constitution is explicit on the permissible accusatory process that the Executive can employ against the citizen. Men of goodwill, not evil ones only, invent, under feelings of urgency, new and different procedures that have an awful effect on the citizen. The new accusatory procedure survives if a transient majority of the Court are persuaded that the device is fair or decent. My view of the Constitution confines judges—as well as the lawmakers and the Executive—to the procedures expressed in the Constitution. We look to the Constitution—not to the personal predilections of the judges—to see what is permissible. Since summoning an accused by the Government to explain or justify his conduct, that is charged as a crime, may be done only in one way, I would require a constitutional amendment before it can be done in a different way.

The alternate path which we take today leads to trial of separate essential parts of criminal prosecutions by commissions, by executive agencies, by legislative committees. Farming out pieces of trials to investigative agencies is fragmentizing the kind of trial the Constitution authorizes. It prejudices the ultimate trial itself; and it puts in the hands of officials the awesome power which the Framers entrusted only to judges, grand jurors

and petit jurors drawn from the community where the accused lives. It leads to government by inquisition.

The Civil Rights Commission can hold all the hearings it desires; it can adduce testimony from as many people as it likes; it can search the records and archives for such information it needs to make an informed report to Congress. See *United States* v. *Morton Salt Co.*, 338 U. S. 632; *Oklahoma Press Pub. Co.* v. *Walling*, 327 U. S. 186. But when it summons a person, accused under affidavit of having violated the federal election law, to see if the charge is true, it either acts in lieu of a grand jury or of a committing magistrate. The sifting of criminal charges against people is for the grand jury or for judges or magistrates and for them alone under our Constitution. In my view no other accusatory body can be used that withholds the rights of confrontation and cross-examination from those accused of federal crimes.

I would affirm these judgments.

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